

NO. HHD LND CV 15 6056637S	:	SUPERIOR COURT
	:	
LANDMARK DEVELOPMENT GROUP LLC	:	
AND JARVIS OF CHESHIRE LLC	:	JUDICIAL DISTRICT
	:	OF HARTFORD
v.	:	LAND USE DOCKET
	:	
EAST LYME WATER AND SEWER	:	
COMMISSION	:	NOVEMBER 16, 2015

SECTION 8-8(k) MOTION FOR ADDITIONAL EVIDENCE

Plaintiffs Landmark Development Group LLC and Jarvis of Cheshire LLC, move under General Statutes § 8-8(k), for this Court to receive and consider additional evidence, delineated specifically below, regarding the defendant the Town of East Lyme's sewer system capacity and East Lyme Water and Sewer Commission's recent allocation of approximately 102,000 gallons of sewer system capacity to a 400 unit market-rate residential apartment development, and planned allocation of 64,000 more gallons for commercial use on the same site, *at the same time that the Commission has been telling this Court since 2012 that all or most of its available capacity is limited and committed to other owners within the Town's sewer district, or alternatively, that as of 2012, the Town had only 130,000 to 225,000 gallons of remaining capacity.*

If this Motion is granted, the plaintiffs will ask the Court for permission to file a final, Supplemental Brief explaining the relevance of this evidence in the context of the main issue before the Court in this appeal, which is whether the defendant Commission's October 2014 allocation of only 14,434 gallons, effectively denying Landmark's application for up to 118,000 gallons, is supported by substantial evidence. As explained further below, this evidence is necessary for the "equitable disposition of the appeal."

I. BACKGROUND.

Most recently, this Court granted Landmark's motions allowing it to serve a document discovery request to the defendant Sewer Commission about its grant of sewer capacity to a nearby multi-family, market-rate (self-styled "luxury") apartment complex known as "Gateway"; and following receipt of those documents, to take the deposition of East Lyme sewer administrator Brad Kargl. Both have now occurred.¹

At this time, a clear and disturbing picture of the defendant Commission's conduct has emerged: while claiming that the Town of East Lyme has "limited" sewer capacity and that the Commission is *unable* to provide any more than 14,434 gallons of capacity sewer to Landmark's affordable housing development on a 236 acre parcel, the Sewer Commission has granted *in 2015* approximately 70,000 gallons of sewer capacity to Gateway and affirmed the availability of about 100,000 gallons more, *without even requiring a sewer capacity study* from the Gateway developer. In the words of Mr. Kargl, such a capacity study has not occurred, *there is plenty of sewer system capacity for these allocations*, and the Commission's ordinances *do not require a capacity study* or direct the Sewer Administrator to require one.

The ultimate issue in this appeal remains whether there is substantial evidence in the record to sustain the Commission's October 2014 grant of only 14,434 GPD to Landmark, a denial of its request for up to 118,000 GPD. This Court has a record and briefing about how the Commission's October 2014 denial is contradicted by its own sewer reports and prior actions. What this Court has not had to date is evidence regarding the Commission's handling of the Gateway development as a comparison to – and contradiction of – the Commission's actions and

¹ Attorney Zamarka, representing the Commission, filed a statement "verifying" that the document production was accurate and complete. The Kargl deposition demonstrated that the document production was substantially incomplete. Landmark obtained through its own search of Town files, numerous relevant and accessible documents, plainly within the scope of the discovery request, that were not produced.

arguments opposing Landmark and its application. It is now clear that the defendant Commission has actively misled this Court in several critical respects.

Landmark now moves to fill in these pieces of the puzzle with the following supplemental evidence:

1. Excerpts, deposition of Bradford Kargl, October 1, 2015.²
2. Plaintiffs' First Set of Requests for Production of Documents to Defendant Water and Sewer Commission, June 1, 2015.
3. Photographs with labels of Gateway Planned Development District: Aerial (January 15, 2008); Gateway Commons Development Plan "Original Plan" (May 3, 2007); Residential Development Plan "Original Plan" (May 3, 2007); and Retail Parcel Development Plan "Original Plan" (May 3, 2007).
4. Gateway Planned Development district - boundary description Parcel Data.
5. Excerpt, East Lyme Water and Sewer Commission Regular Meeting Minutes, January 28, 2003.
6. Handwritten notes of B. Kargl regarding Gateway, 10/24/06.
7. Photographs with labels of Gateway Planned Development District: Gateway Commons Development Plan "Revised Plan" (January 15, 2008); Residential Development Plan "Revised Plan" (January 15, 2008); and Retail Parcel Development Plan "Revised Plan" (January 15, 2008).
8. Excerpt, East Lyme Zoning Commission Public Hearing I Minutes, July 25, 2008.
9. Excerpt, East Lyme Zoning Commission Special Meeting Minutes, July 31, 2008.
10. Map, Wastewater Flow Estimation Based on Moderate Zoning Buildout with Town Staff Input, February 2005, prepared by Fuss & O'Neill³.

² Exhibits 2-30 were exhibits or part of the inquiries at the Kargl deposition.

³ Several deposition exhibits are already record exhibits in this appeal, but are proposed here as a package due to discussion about them at the Kargl deposition.

11. Flow Demand Worksheet, Gateway Residential Phase I, December 26, 2012.
12. Letter from T. Harris to P. Formica regarding Request for Service of Gateway Development, February 21, 2013.
13. Exhibits regarding 2013 Sewer Benefit Assessment of Gateway: letters from B. Kargl to Gateway Development regarding Supplemental Sewer Assessment – Flanders Road, 286 Flanders Road, and Ancient Highway, dated March 27, 2013; Town of East Lyme Water and Sewer Commission Notice of Public Hearing for April 9, 2013; Supplemental Sewer Assessment Resolution; East Lyme Water and Sewer Commission Public Hearing Minutes, April 9, 2013; and East Lyme Water and Sewer Commission Special Meeting Minutes, April 9, 2013.
14. Application for Site Plan Approval for Gateway Development, April 19, 2013.
15. Letter from W. Mulholland to T. Harris Regarding Approval with Conditions for Site Plan Approval, June 26, 2013.
16. East Lyme Zoning Commission Regular Meeting Minutes, June 20, 2013.
17. Site Plan Sheets: SP-0, Site Plan; SU-1 to SU-7, Site Utility Plan; and PS-1, Water and Wastewater Pump Station Detailing, all reduced to 11 x 17.
18. Flow Demand Worksheets, Gateway Commons Development, for Phase 1 (Residential), Phase 2 (Residential), and Future Phase 3 (Commercial), June 25, 2013.
19. Letter from B. Kargl to GDEL Residential regarding Water and Sewer Availability to Gateway Development Site, March 17, 2014.
20. Letter from T. Hollister to M. Zamarka and B. Kargl regarding Sewer Connection and Sewer Capacity to Gateway Development, June 17, 2014.
21. Letter from M. Zamarka to T. Hollister regarding Response to T. Hollister June 17, 2014 Letter, July 16, 2014.
22. Application for Sewer Connection Permit for GDEL Residential, Permit Number Issued 2889, May 1, 2015.
23. Application for Sewer Connection Permit for GDEL Residential, Permit Number Issued 2888, May 1, 2015.

24. Excerpt, Amended and Clarified Resolution for Landmark Development Group Application for Determination of Sewer Capacity, March 11, 2014.
25. "Calculation D" performed by East Lyme Water & Sewer Commission 10/28/14.
26. East Lyme Sewer Flows – History, 2008 to August 2015.
27. State of Connecticut Facility Monthly Flows, February 2013 to October 2014.
28. Excerpt, East Lyme Water and Sewer Commission Regular Meeting Minutes, May 25, 1999.
29. Excerpt, Notes from Phone Conference with Atty. Fuller, February 1, 2001.
30. Excerpt, East Lyme Zoning Commission Public Hearing Transcript, September 26, 2002.

II. SECTION 8-8(k) ALLOWS ADDITIONAL INFORMATION WHERE NECESSARY FOR THE EQUITABLE DISPOSITION OF THE APPEAL.

Among the facts revealed by the proposed supplemental evidence, and which are necessary to the substantial evidence issue before the Court, are these:

- from 2012-14, as the Gateway developers moved ahead with a site development plan projected to require in total about 102,000 gallons of sewer capacity, for multi-family residential and 64,000 for commercial uses, Mr. Kargl told Gateway in writing that the public sewer system could meet their needs;
- during this timeframe, Mr. Kargl did not perform or request a sewer capacity study because, in his view, the system has ample capacity, and the Town's sewer ordinance does not allow or require a capacity study for land that is within the Town's sewer district;
- the Sewer Commission, through Mr. Kargl, granted connection permits to Gateway for the first time in May 2015, not 2013 as represented to this Court by the Commission;
- at no time has Mr. Kargl or the Sewer Commission performed for Gateway the type of sewer district / acreage / ratio analysis that it performed for Landmark in October 2014 (and, in fact, such a calculation would have given Gateway about 10,000 gallons);

- from 2012 to 2015, overall use of East Lyme's sewer system has been flat or declining; and
- the Gateway property is located in close proximity to Landmark.

The proposed supplemental evidence also goes further back in time, to 1999-2001, when Town officials actively discussed using denial of sewer to preventing affordable housing, and to 2003-04, when the Commission narrowed the sewer district on Landmark's property, to follow a contour (elevation) line, at the same time that it expanded the sewer district on the Gateway property to follow the parcel's perimeter property line. In his deposition, Mr. Kargl agreed that sewer districts should follow property lines.

The supplemental evidence presents a compelling picture: (1) East Lyme has ample sewer capacity to accommodate Gateway's application; (2) the Commission has interpreted its own sewer ordinance completely opposite for Gateway than for Landmark; (3) East Lyme has been using its sewer system to prevent affordable housing while promoting luxury housing; and (4) the defendant Commission has repeatedly, knowingly misled this Court about the Town's sewer system.

As provided by General Statutes § 8-8(k), it is within the Court's sound discretion to allow additional evidence that is necessary for the equitable disposition of a zoning appeal. See *Tarasovic v. Zoning Commission*, 147 Conn. 659, 668 (1959); *Collins Group v. Zoning Board of Appeals*, 78 Conn. App. 561, 579 (2003). Courts have approved the admission of additional evidence in land use appeals where it was deemed necessary for the court to have a complete picture of the issues before it. See *Troiano v. Zoning Commission*, 155 Conn. 265, 268-70 (1967) (reversing trial court ruling excluding evidence offered by plaintiff to show financial effect of ordinance on him); *Heady v. Zoning Board of Appeals*, 139 Conn. 463, 469 (1953) (affirming admission of testimony showing defendant had applied for a building permit to erect a house in another part of town, which showed he did not intend to live in the subject house).

Our courts have granted motions to supplement the record that include evidence concerning similar prior applications for the same property, see *Fuller*, *supra*, §§ 28:8 and 32:8;

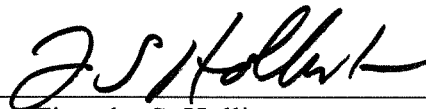
and prior proceedings concerning the same property that were referenced in the record of the application under review or raised in the plaintiff's appeal. See, e.g., *Valigorsky v. Zoning Board of Appeals*, 2008 Conn. Super. LEXIS 425, *4-6 (Conn. Super. Feb. 25, 2008) (denying plaintiff's motion to strike items from the return of record concerning the same property since the prior proceedings were referenced during the subject hearing and/or referenced in the plaintiff's appeal); see Fuller, § 28:7.

III. CONCLUSION.

For these reasons, the attached documents should be added to the record under authority of General Statutes § 8-8(k).

PLAINTIFFS,
LANDMARK DEVELOPMENT
GROUP LLC AND JARVIS OF
CHESHIRE LLC

By



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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Motion for Additional Evidence and attached Exhibits were electronically delivered this 16th day of November, 2015, to all counsel of record and written consent for electronic delivery has been received from all counsel.

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A handwritten signature in black ink, appearing to read "T. S. Hollister", is written over a horizontal line.

Timothy S. Hollister
Commissioner of the Superior Court

Tab 1

1 STATE OF CONNECTICUT

2 JUDICIAL DISTRICT OF HARTFORD

3 LAND USE DOCKET

4 HHD LND CV 13 6040390 S

5 -----x

6 LANDMARK DEVELOPMENT GROUP, LLC, :

7 AND JARVIS OF CHESHIRE, LLC, :

8 Plaintiffs, :

9 -v- :

10 EAST LYME WATER AND SEWER :

11 COMMISSION, :

12 Defendant. :

13 -----x

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16 Deposition of BRADFORD C. KARGL, taken
17 pursuant to Notice, held at the Law Offices of Shipman
18 & Goodwin, LLP, One Constitution Plaza, Hartford,
19 Connecticut, before James A. Martone, LSR #248, and
20 Notary Public, in and for the State of Connecticut, on
21 October 1, 2015, at 3:40 p.m.
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DIRECT EXAMINATION BY MR. HOLLISTER:

Q. Good afternoon, Mr. Kargl. This is Exhibit

1, I'll show you copy.

(Plaintiff's Exhibit 1

Marked for identification)

Q. Mr. Kargl, as I think you know, I'm Tim Hollister, and in this case, which is Landmark Development Group and Jarvis of Cheshire, versus East Lyme Water and Sewer Commission, I represent Landmark and Jarvis.

And I think in general you know that this case concerns the East Lyme Water and Sewer Commission's allocation of 14,400 something gallons of sewer capacity, where Landmark had asked for up to 118,000. That's the general subject, you're aware that's the general subject matter?

A. Yes.

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3 Q. Now this is a document request that was
4 sent out from my office on June 1st, and it basically
5 asks the Water and Sewer Commission to produce all
6 documents that related to the so-called Gateway
7 Residential Development. Did you review this document
8 when it was sent to the Town?

9 A. I believe I did.

10 Q. Okay. Did you --

11 A. I believe I did.

12 Q. Do you recall participating in putting
13 together documents that were responsive to it?

14 A. Yes.

15 Q. Now specifically this asked for e-mails and
16 electronic documents. Did you first make an inventory
17 of your own e-mail account when you were providing
18 responses to this production request?

19 A. I don't believe I provided any e-mails
20 relative to this request.

21 Q. Okay. My question is, did you go into your
22 e-mail account, your e-mail server, for any documents
23 or information related to the Gateway Development?
24 Did you yourself do that?

25 A. No.

1 Q. Why not?

2 A. Well, I have hard copies of everything.

3 Q. Okay.

4 A. That I thought I needed to produce.

5 Q. But did you go back into your server to
6 make sure that there was nothing you might have either
7 deleted or stored away that you didn't have a hard
8 copy of? Did you go through that exercise?

9 A. I would say no.

10 Q. All right. Let me back up. Do you
11 maintain both a town e-mail account and a personal
12 account, like a g-mail or something like that?

13 A. No. Town e-mail.

14 Q. Okay. Did you go back over the Town
15 e-mails for e-mails to or from any town officials,
16 like members of the Water and Sewer Commission that
17 related to Gateway?

18 A. No.

19 Q. You didn't do that?

20 A. No.

21 Q. Okay. Why not?

22 A. I didn't think it was relevant to this
23 particular request here.

24 Q. Okay. You see --

25 A. Even though it might say that right there,

1 you know, yeah, I just didn't do any e-mail searches
2 relative to this request.

3 Q. All right. Do you recall at any time since
4 you've been part of the Town staff, receiving or
5 sending e-mails to Water and Sewer Commission members
6 about Gateway? Is that part of the process?

7 A. Commission members, or staff? I'm sorry.

8 Q. Let me --

9 A. There is interaction with staff on a daily
10 basis relative to projects. So there would have been
11 e-mail. There is e-mail.

12 Q. So you might have received e-mails from
13 Gary Goeschel, for example?

14 A. Could very well have been.

15 Q. And from Mr. Mulholland?

16 A. Could very well.

17 Q. But you didn't search for those?

18 A. No.

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Q. And just very briefly, can you tell me what positions you've held as jobs.

A. I've been the -- worked for the Northeast District Department of Health as the -- as a Registered Sanitarian. Then worked for the -- and that was for four years. Worked five years for the Town of East Hampton, as the local Health Sanitarian in the Town. An additional nine years with the Town of East Lyme as the Public Utilities Administrator for Regional Wastewater Treatment Facility. Consisting of East Hampton and Colchester. And then I worked five years --

1 Q. I'm sorry, is that East Lyme or East
2 Hampton?

3 A. East Hampton and Colchester Regional
4 Wastewater Treatment Facility.

5 Q. Okay.

6 A. Then I worked five and a half years as an
7 environmental consultant, water and sewer, for
8 environmental -- for Marin Environmental, and then now
9 ten plus years at Town of East Lyme.

10 Q. So did you join the East Lyme town staff in
11 2005?

12 A. Correct.

13 Q. Okay. And you've been there full time ever
14 since?

15 A. Correct.

16 Q. Who do you report to administratively?

17 A. Administratively I report to the Public
18 Works Director.

19 Q. And who is that?

20 A. That is currently Joe Bragaw.

21 Q. And do you have staff that work for you?

22 A. I do have staff that works for me.

23 Q. Who is that?

24 A. On the sewer side, we have Jeannie
25 Niskanen, who is my secretary. I have a Sewer

1 Superintendent, Rick Pape. And then I have under him,
2 are four utility workers.

3 Q. I'd like to ask you about some of the
4 responsibilities of your job. Do you get involved in
5 layouts of sewer systems and sewer piping, planning of
6 the systems?

7 A. Yes.

8 Q. Okay.

9 A. Physical layouts, yes.

10 Q. And engineering, review of engineering
11 drawings?

12 A. Correct, yes.

13 Q. What about capacity analysis, is that part
14 of your job?

15 A. As it relates to the ability of the system
16 to handle capacity, yes.

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Q. Okay. Does your job include compliance,
monitoring the various agreements that the Town has
with State of Connecticut facilities that discharge
into the sewer system?

A. As it relates to the discharge at the
wastewater treatment facility in New London, no. We,
our facilities, we have to measure flows, as they are
delivered to the receiving POTW in New London.
Publicly Owned Treatment Works.

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Q. Are you aware that in 2003, the Water and
Sewer Commission moved the sewer line to encompass the
current full Gateway Development?

A. I am aware of that.

Q. Look at the next to the last page. Page 9
of 10. And there's a reference there under the

1 heading of Discussion of sewershed boundary, to moving
2 the sewershed boundary for the Gateway parcel to meet
3 the property line as opposed to what then existed.

4 Was that your understanding as to the
5 history of the Gateway -- is that your understanding
6 of the history of the Gateway Development? That that
7 property, that the sewershed boundary was moved in
8 2003?

9 A. Yes.

10 Q. And do you know why of your own knowledge,
11 why the sewershed boundary was moved?

12 A. No. I don't.

13 Q. And based on just generally your experience
14 as a sewer administrator, does it make more sense for
15 sewer administration to have sewershed boundaries be
16 property lines or as opposed to splitting properties
17 or following contour lines? What is the best practice
18 in your opinion?

19 A. I would have to say that the best practice
20 is based on a property line.

21 Q. And why is that?

22 A. I think it's easier to administer.

23 Q. And that would be particularly true for
24 things like sewer assessments?

25 A. Yes.

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24 Q. And you see the date in the upper

25 right-hand corner, 10/24/06?

1 A. Yes.

2 Q. Can you explain what this document is?

3 A. Well, this is my first encounter with
4 someone from BL Companies as the very, very first step
5 of talking about wanting to do something at this site.
6 And these notes are very sort of cryptic and general,
7 as just me trying to, you know, get some things down
8 on paper. Some thoughts as that meeting took place.

9 Q. All right. And was there a meeting that
10 went with this document or from which this document
11 was created?

12 A. I believe there was a meeting associated
13 with this.

14 Q. Would that have been with John Whitcomb,
15 from BL?

16 A. Yes.

17 Q. Toward the bottom it says "B, Sewer," and
18 below that I believe it says "Is in five years 1.5 mgd
19 reach/exceeded." Do you see that?

20 A. Yes.

21 Q. What does that mean?

22 A. Back then Fuss & O'Neill was preparing the
23 wastewater capacity analysis planning report, which is
24 essentially an update to the facilities plan, and it
25 was being developed at that point, and in that plan

1 they were projecting that within a five-year period,
2 that we would have hit the 1.5 million gallon per day
3 number.

4 Q. So does this sentence --

5 A. That was like a -- so I put that, that was
6 a note that I had.

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6 Q. Let me show you or ask you to look at a
7 page of Exhibit 6, the top of the fourth page, which
8 would be in Section 11.a.9.4, called Submission
9 Requirements. If you look at the bottom of sub b, on
10 the fourth page, the very last thing, number sub 5
11 says "Utility and Highway Improvements." You see
12 that?

13 A. Uh-huh.

14 Q. Would that in your mind include, utility
15 would mean sewer?

16 A. Yes.

17 Q. Okay. So would I be correct in
18 understanding that basically in 2007, the Zoning
19 Commission looked at a submission requirement for this
20 Gateway Development, and what it required for sewer
21 was that sewer improvements be shown?

22 A. Yes.

23 Q. Okay. And would you also look at the very
24 last paragraph of the regulation, 11.a.9.7. Very last
25 page. And I'll just read it, it says "Implementation

1 of an adopted MDP," which means master development
2 plan, "may be phased on the condition that all public
3 infrastructure associated with each phase of the MDP
4 shall be constructed prior to the issuance of
5 certificates of occupancy for such phase or shall be
6 bonded to the satisfaction of the Commission." Do you
7 see that?

8 A. Yes.

9 Q. So would you understand as the sewer
10 administrator, that what the zoning regulation was
11 requiring was that the infrastructure be in place
12 before Certificates of Occupancy are issued?

13 A. Well, that would be my understanding.

14 Q. Okay. I'm just asking you as the sewer
15 administrator, and in your understanding, is that a
16 common practice in the Town of East Lyme, that to get
17 a Certificate of Occupancy, there needs to be some
18 proof that there was a way to dispose of sewage?

19 A. Yes.

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23 Q. Okay. And is that the 20 acre residential
24 parcel?

25 A. That's correct. What I'm familiar with is

1 what is currently under construction.

2 Q. All right. And what is your understanding
3 of the total number of units being proposed,
4 residential units now being proposed?

5 A. Well, that is -- my understanding is 400.

6 Q. Where does that understanding come from?

7 A. It comes from documents, documents provided
8 by Gateway's consultant.

9 Q. Can you go back to Exhibit 6, which is in
10 your pile there, you have Exhibit 8 there. 6 is one I
11 gave to you previously.

12 A. Yes.

13 Q. And on the second page, you will see
14 11.a.9.2.2, Residential Use. Do you see that section?

15 A. Uh-huh.

16 Q. See the last line there, sub 3, it says
17 "The total number of units shall not exceed 275?"

18 A. Uh-huh.

19 Q. That's the zoning regulation that was
20 adopted in 2008 for Gateway.

21 A. Okay.

22 Q. So that was the limitation, it says 275;
23 sohow are they proposing 400 in 2015?

24 A. I don't know.

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Q. East Lyme Zoning Commission Public Hearing
Zoning Commission of July 25th, 2008, and I direct your
attention to the top of page 3. And if you look down
about five or six lines, there's a reference to
"Regardless, they know that water and sewer is
available to the site." And that is Attorney Harris
speaking to the Commission.

What would be your -- as of 2008,
what was the availability of sewer to the Gateway
site? In other words, was the infrastructure built,
pipes connected already? Was there a sewer pipe that
ran through the site? Or did that infrastructure need

1 to be built at that point?

2 A. The water and sewer infrastructure
3 currently existed.

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13 A. Does the map actually show Route 161? The
14 sewer and water are available on Route 161, which I
15 think is just off that picture. (Indicating)

16 Q. The property has frontage on 161?

17 A. Correct.

18 Q. So to connect new development, new
19 buildings on the Gateway site, one would simply just
20 have to extend the sewer line from Route 161 into the
21 site?

22 A. That's correct.

23 Q. Okay. And do you know, as of 2008, had
24 that extension into the site occurred yet?

25 A. It had not.

1 Q. Okay. So when there's a reference by
2 Attorney Harris in 2008 to saying that water and sewer
3 is available, do you understand that he was saying is
4 simply that sewer is available within Route 161?

5 MR. ZAMARKA: Object to the form.
6 You can answer.

7 A. That the infrastructure was available for
8 connection.

9 Q. Let me turn that question around. As of
10 2008, you were, you had been with the Town for
11 approximately three years. Do you have any knowledge
12 of anyone, your office or the Water and Sewer
13 Commission, having formally allocated sewer capacity
14 to the Gateway Development?

15 A. No.

16 Q. Did you know that that had not occurred as
17 of that point? Is that your understanding?

18 A. Yes.

19 Q. And why do you say that?

20 A. Well, as far as I know, in the three years
21 that I had been there, there had not been any
22 discussions that I had on allocation of capacity of
23 any type for Gateway.

24 MR. HOLLISTER: Showing you
25 Exhibit 10.

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3 Q. Exhibit 10 is the Minutes of a Special
4 Meeting of the East Lyme Zoning Commission, and I will
5 just represent to you that the minutes reflect
6 approval of a master development plan for the Gateway
7 site.

8 So the answer you just gave that as
9 of 2008, there was no formal commitment or allocation
10 of sewer capacity, that would have been true at the
11 time that the Zoning Commission approved the master
12 development plan; is that correct? At the time of
13 Exhibit 10, that answer would still be correct?

14 A. I guess I'm not aware of a commitment made
15 by the Water and Sewer Commission. I don't know of
16 other commitments that might have been made.

17 Q. Well, let me ask you, does the Zoning
18 Commission have the authority to commit the Town to
19 sewer capacity?

20 A. I don't believe they do.

21 Q. So your answer is we can say at least that
22 as of July of 2008, the Water and Sewer Commission had
23 not made any formal commitment of sewer capacity?

24 A. Yes.
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Q. Can we agree that the so-called Gateway property is approximately what is shown in purple as parcel 36?

A. That's correct.

Q. Is that pretty much all of the Gateway parcel?

A. It appears to be so.

Q. All right. Now the chart in the upper right, the first -- to the right of the number 36, the first column which is a little difficult to read but it says "Existing sewer infrastructure built," and the word there is "No." So you just testified that as of

1 2007-2008, sewer was available within Route 161.

2 So if that's the case, and all of the
3 land was within the sewer district, do you know why
4 this chart would say that, would say "No" as to the
5 infrastructure being built?

6 A. Well, I think it's referring to the sewer
7 infrastructure into the block noted as 36.

8 Q. Okay. So with regard to the top third of
9 that chart, where there are 13 or 14 properties that
10 say "Yes," your understanding is those are the
11 properties where there has actually been an extension
12 from a public line on to private property?

13 A. That's correct.

14 Q. All right. Now continuing on line 36, and
15 going to the right, it says, there's a column that
16 says "Existing sewerred parcels," and the number zero
17 is there. Do you see that?

18 A. Uh-huh. Yes.

19 Q. As of the time that Fuss & O'Neill prepared
20 this report in 2007, there was zero sewer discharge
21 from the Gateway parcels into the town's sewer system?

22 A. That's correct.

23 Q. And then if we continue further to the
24 right, there is another zero under Developed Unsewered
25 Parcels, which isn't really relevant, and then the

1 last two columns, it says 180,000 gallons per day, do
2 you see that? For parcel 36?

3 A. Yes.

4 Q. Do you know, where did that 180,000 number
5 come from?

6 A. I'm not certain. I did not prepare this.
7 I'm honestly not sure, but there might have been a
8 zoning exercise, or a planning exercise. I was not
9 originally involved with the preparation of these
10 numbers.

11 So Fuss & O'Neill had to meet with
12 someone in the Town, perhaps the Town planner at the
13 time, to, you know, try to, you know, determine or
14 anticipate or expect future flows.

15 Q. Okay. So your understanding is that Fuss &
16 O'Neill would have consulted with someone in the Town?

17 A. They would have had to consult with someone
18 to understand what the, you know, the potential
19 build-out of this property is, based on planning
20 regulations I would assume.

21 Q. But you have no personal knowledge
22 yourself?

23 A. No.

24 (Plaintiff's Exhibit 12
25 Marked for identification)

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Q. I'm going to show you Exhibit 13.

(Plaintiff's Exhibit 13

Marked for identification)

Q. Can you identify what Exhibit 13 is?

A. Well, this is a -- this comes from I believe Gateway's consultant. And it looks like a work sheet that they had prepared as, at least in the initial stages of their project, of, you know, of determining potential discharges and flows from the

1 proposed development.

2 Q. And do you know whether this document is in
3 your files today?

4 A. This is in my files today. I know that.

5 Q. Okay. And you say the Gateway's
6 consultant, was that still B&L Companies as of 2013?

7 A. Yes.

8 Q. Or December, 2012?

9 A. Yes.

10 Q. So you received this document. Do you know
11 who you received it from?

12 A. Well, I don't know if it was from the
13 Gateway's consultant or perhaps from their attorney or
14 from ownership. Off the top of my head, I don't
15 recall exactly.

16 Q. And you agree that the number shown on
17 here, total anticipated sewer demand for 275 units is
18 68,447 gallons?

19 A. Yes.

20 Q. Now do you recall that in early 2013,
21 Gateway, represented by Attorney Harris, came into the
22 Town, including the Water and Sewer Commission, more
23 formally requesting sewer connection and sewer
24 capacities? Do you recall that general timeframe?

25 A. Yes, I do.

1 MR. HOLLISTER: I'll show you Exhibit
2 14.

3 (Plaintiff's Exhibit 14
4 Marked for identification)

5 Q. Can you identify what this is?

6 A. It's a draft letter, addressed to the
7 Chairman of the Water and Sewer Commission. Looks
8 like a formal request to -- Let's see. -- I'm
9 looking exactly for what the request was. Request for
10 service. Essentially a request for service.

11 Q. Request for sewer service specifically?
12 Well, sewer and water?

13 A. Sewer and water, yes.

14 Q. Now can you explain to me why there would
15 be a draft letter from Attorney Harris' law firm in
16 the town's files?

17 A. Well, it was put on my desk and I put it in
18 the file.

19 Q. Did you get this directly from Attorney
20 Harris, do you remember?

21 A. I don't remember where I got it from.

22 Q. So do you consider this letter, Exhibit 14,
23 to have been Gateway's first formal or official
24 request for water and sewer service to develop the
25 Gateway site?

1 A. I'm not sure if it was the first. Perhaps
2 an attempt at the most formal -- perhaps the first
3 formal request here.

4 Q. And, in fact, the second paragraph refers
5 back to the proceedings in front of the East Lyme
6 Zoning Commission in 2008, correct?

7 A. Um-hum, yeah.

8 Q. Now is it correct in your memory, in your
9 understanding, that in 2008, there was no formal
10 consideration by the Water and Sewer Commission of the
11 Gateway Development, there was no referral, there was
12 no hearing, there was no --

13 A. That's correct.

14 Q. So in paragraph 2, Attorney Harris is
15 referring to the Zoning Commission because that was
16 the only Town of East Lyme body that considered
17 Gateway back in 2008, so what he's saying, I just want
18 to make sure this is correct, consistent with your
19 understanding, what he's saying is that we were in
20 front of zoning, in 2008, and we represented that the
21 property was in the sewer district at that point?

22 A. Correct.

23 Q. Now at this point in February of 2013, did
24 you have any understanding of how much sewer capacity
25 Gateway was going to require?

1 A. I had an understanding based on what has
2 been submitted.

3 Q. Would that be Exhibit 13?

4 A. That's correct.

5 Q. Okay. Do you recall any other written
6 submission or statement by B&L or by Attorney Harris,
7 that's different from what was shown, in orders of
8 magnitude from Exhibit 13?

9 A. No. Well, there was an update to this, but
10 I don't know if it was a significant change, but
11 they -- there was a Phase 2 added. You know, there is
12 another, in my files I have -- I think this was -- an
13 ongoing work sheet. And I think revised that.

14 Q. We're about to get to that.

15 A. Yeah.

16 Q. But as of February, 2013, what you had was
17 the 68,000 gallons?

18 A. That's correct.

19 Q. Now in March and April of 2013, the
20 Commission, Sewer Commission initiated a supplemental
21 sewer assessment for the Gateway property, correct?

22 A. Yes.

23 MR. HOLLISTER: Exhibit 15.

24 (Plaintiff's Exhibit 15

25 Marked for identification)

1 Q. Could you just look these and make sure
2 these are a set of documents that related to sewer
3 assessment on the Gateway property in March and April
4 of 2013?

5 A. Yes.

6 Q. What is your understanding of why a sewer
7 assessment was done at that time for the Gateway
8 parcel?

9 A. Well, this is probably something I guess
10 that probably should have been assessed initially when
11 the sewers went in because the property fronted on the
12 sewers. So it was looked at, or at least attention
13 was drawn to it by the Commission when this
14 development was beginning to take shape.

15 We said wait a minute, this needs to
16 be assessed. This should have been assessed. And so
17 we started the assessment process.

18 Q. Can you explain to me why that did not
19 occur in 2008, when Gateway's representatives were in
20 front of the Town Zoning Commission with a Master
21 Development Plan?

22 A. I can't explain why we didn't do it in
23 2008.

24 Q. And why was this called a supplemental
25 sewer assessment?

1 A. Well, I'm not sure why it was called a
2 supplemental sewer assessment.

3 Q. Let me direct you to the fifth page. The
4 one that says Supplemental Sewer Assessment
5 Resolution. You see the first paragraph, there's a
6 reference to a resolution in the early 1990s?

7 A. Yes. I don't know. I did not come up with
8 this language. I don't know why this --

9 MR. ZAMARKA: If it will help speed
10 things along, the original assessment is noted on the
11 top of the page we're referring to as done in '91 or
12 '92, and every resolution since then has been referred
13 to is a supplemental in one form or another is my
14 understanding.

15 Q. Okay. What I'm asking Mr. Kargl is, it
16 would make sense if there was any prior assessment
17 related to this property, then anything subsequent
18 would be called supplemental.

19 A. I understand.

20 Q. Do you have any other understanding as to
21 why, any other reason?

22 A. No. Other than what Mr. Zamarka just
23 mentioned.

24 Q. At the bottom of that same page there are
25 references to three other properties; 36 South

1 Beechwood, 50 Terrace Avenue, 5A and B at Attawan
2 Road. Do those properties have anything to do with
3 Gateway?

4 A. They do not.

5 Q. Can we agree that the three at the bottom
6 are the three Gateway parcels?

7 A. Yes.

8 Q. And do you know, those three parcels
9 referred to, is that the entire approximately 160 acre
10 Gateway property or is it just the residential piece?

11 A. I believe it's the entire, because it's the
12 land. It's the entire piece as shown.

13 Q. And how were the amounts arrived at?

14 A. The amounts were arrived at based on the
15 original sewer assessment resolution adopted in I
16 believe that was the late 1980s. There's a formula
17 for that. And we referred to that.

18 Q. Can you walk me generally through the
19 formula, how these amounts were arrived at?

20 A. Well, the formula has essentially four
21 components to it. And is applied, either you have a
22 commercial property that needs to be assessed or a
23 residential property that is being assessed.

24 And the residential is handled
25 differently than the commercial. In this case, this

1 was treated as commercial property, and with that
2 there are four variables in determining the
3 assessment.

4 Frontage, assessed land value,
5 acreage. And I guess a minimum unit charge that's
6 also applied to it.

7 Q. All right.

8 A. So those are the four variables, and then
9 there is a rate that each one of those is multiplied
10 by to get a sum of the total assessment. And those
11 rates were established back in the original sewer
12 project. Because this was on the original sewer line.

13 Q. Would you agree that the basic purpose of a
14 sewer benefit assessment is to allow the Town of East
15 Lyme to recapture some of the added value that a
16 property owner gets when they, when their property is
17 able to be connected to the sewer?

18 A. That's correct.

19 Q. So it's a recapture of increased value,
20 correct? The Town recouping some of its cost to
21 install the sewer line from those who benefit from the
22 sewer line?

23 A. Correct.

24 Q. Now in your understanding, as the East Lyme
25 sewer administrator, does the imposition of an

1 assessment give the property owner who is assessed a
2 right or guarantee to sewer capacity that they didn't
3 have before the assessment?

4 A. I don't know for sure, but I suspect so.

5 Q. Why?

6 A. Well, it's sort of explicit that sewer is
7 available, and by you, you know, being assessed and
8 paying for that, you're paying for a piece of the
9 infrastructure. You essentially have the ability or
10 the right to connect to it. So I guess in that sense,
11 yes.

12 Q. Okay. Let's separate right to connect to
13 right to a certain amount of capacity. My question
14 is, based on your experience in the Town of East Lyme,
15 does the imposition of a sewer benefit assessment give
16 the property owner who is assessed a right to a
17 particular gallonage of capacity to discharge into the
18 sewer system?

19 A. I'd say no.

20 Q. Why not?

21 A. I would have no way of measuring that.
22 There is nothing in the regulations to give me the
23 ability to do that.

24 Q. All right. So part of your testimony is
25 that the regulations themselves do not include a

1 capacity factor as you say among the four factors,
2 it's just based on things like frontage, land value,
3 acreage?

4 A. That's correct.

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Q. And do you see the reference on the third page there to 275 residential units?

A. I do see that.

Q. Okay. So is it your understanding, if you know, that in 2013, there was a site plan application for, not for 400 units, but for 275 residential units?

A. Repeat that question again.

Q. Yes. Is it your -- I'll ask it a different way.

A. Okay.

Q. You are aware that in 2013, Gateway applied to the Zoning Commission for site plan approval?

A. Yes.

Q. And is it your understanding that they applied at that time for, not for 400 units but 275 units?

A. Yes.

Q. Now one of the documents in this package is

1 the Town of East Lyme Zoning Commission Minutes for
2 June, 2013, and could you turn to page 5 of those
3 minutes.

4 A. Okay.

5 Q. If you go down about two-thirds of the
6 page, there's a paragraph that says "Mr. Harris," that
7 being Attorney Harris, "stated they will get water and
8 sewer approval after it is assessed for water and
9 sewer, so they don't anticipate any issues."

10 As of June of 2013, had you as the
11 sewer administrator, guaranteed or promised any
12 particular sewer capacity to Gateway through Attorney
13 Harris?

14 A. No. Maybe availability of sewer
15 infrastructure but not of capacity.

16 Q. Okay. So your understanding is that as of
17 2013, the situation, June of 2013, when Gateway was
18 getting its site plan approval, the common
19 understanding was that sewer was available but there
20 had been no specific commitment to capacity?

21 A. Correct.

22 Q. I show you Exhibit 17.

23 (Plaintiff's Exhibit 17

24 Marked for identification)

25 Q. When we were looking earlier at the

1 December, 2012 worksheet, you said that there was an
2 update. Is Exhibit 17 the update that you were
3 referring to?

4 A. Yes.

5 Q. Could you just explain your understanding
6 of what Exhibit 17 is, who it came from and why it was
7 prepared?

8 A. Well again, it might have come either
9 through the consultant or Gateway's attorney but it
10 eventually came to me, for review.

11 Q. Now this document refers to a Phase 2 for
12 residential, correct?

13 A. Correct.

14 Q. 125 additional units on top of the 275?

15 A. Yes.

16 Q. Is that where your understanding of 400
17 units comes from?

18 A. That's correct.

19 Q. Okay. Can you explain to me if Gateway had
20 just gotten site plan approval for 275 units, under a
21 regulation that said total 275 units, why they would
22 give you a document that showed 400 units?

23 MR. ZAMARKA: Object as to form. You
24 can answer.

25 A. I don't know.

1 Q. So am I correct in reading this document
2 that for Phase I residential, 275, with the update
3 that you referred to, there was, they were asking for
4 70,947 gallons for Phase 1?

5 A. Yes.

6 Q. 30,900 for residential Phase 2?

7 A. Yes.

8 Q. And 64,488 for the future Phase 3
9 commercial?

10 A. Uh-huh. Yes.

11 Q. And so roughly speaking, adding those
12 through up, it's about 164,000 gallons per day?

13 A. Yes.

14 Q. Now the sewer benefit assessment, which had
15 occurred just a month or so earlier, if you know, was
16 the amount of that assessment related in any way to
17 the anticipated sewer demand shown on Exhibit 17? Was
18 there any relationship between them?

19 A. No. None whatsoever.

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Q. All right. Showing you Exhibit 19.

(Plaintiff's Exhibit 19
Marked for identification)

Q. Exhibit 19 came from your files, and my only question is, is this document, Exhibit 19 any different from 17 except that 17 has some additional handwritten notations at the bottom? Are they essentially the same?

A. They are essentially the same document.

Q. Just to continue with the chronology, I think we've established that as of June of 2013, you are having discussions, conversations, exchanging work sheets with Gateway's consultant, B&L, about sewer capacity, number one, correct?

1 A. Well, proposed sewer demand, yeah.

2 Q. Okay, and the property has been assessed
3 but am I correct that as of June of 2013, there would
4 have still been no formal commitment by the Sewer
5 Commission of capacity?

6 A. Correct.

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Q. Can you tell me what Exhibit 21 is?

A. Again, this is a letter indicating that we have water and sewer infrastructure on -- well, located on Flanders Road for connection.

Q. Can you explain to me why this, why you wrote this letter at this time, in March of 2014?

A. I believe it was requested that, that they needed it. I believe I was asked to do this as Gateway was approaching a point where they had to make some decisions about moving forward. Perhaps for financing or something.

I don't want to speculate too much, but they needed something from us indicating that there's sewer and water that they can connect to.

Q. All right.

A. So --

Q. You testified that the sewer had long since existed within Route 161/Flanders Road, and that there had been an assessment in April of 2013, which presumably they were now paying on a monthly basis. With those two facts, why, in your understanding, why

1 did they need or did they request a letter confirming
2 the availability of sewer?

3 A. Well, I don't know why they wanted this
4 letter, but I wouldn't have issued it unless it was
5 requested, by someone.

6 Q. When you issued this letter, did you
7 believe that you were indicating to Gateway that the
8 capacity, the sewer capacity shown on those work
9 sheets from BL had been granted to them?

10 A. This was not related to capacity, this was
11 related to physicality of making connection to
12 available sewer and water on Flanders Road.

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19 Q. Showing you Exhibit 23, which I'm sure
20 you've seen before. This is an exchange of letters in
21 June and July, 2014, between Attorney Zamarka and you
22 and myself. Second page is Attorney Zamarka's letter
23 back to me. Did you receive a copy of that when he
24 wrote back to me?

25 A. I don't recall if I have a copy of the

1 letter or not.

2 Q. But you've seen it before, right?

3 A. I don't recall that I have.

4 Q. The third paragraph says "Applications
5 received from the Gateway Developers with respect to
6 the system are handled administratively." What is
7 your understanding of that sentence?

8 A. They are handled administratively. The
9 practice of issuing permits is essentially defined in
10 the sewer ordinance.

11 Q. Okay. Going back to the previous
12 paragraph, it says "The parcels that comprise the
13 Gateway Development were along with other properties
14 in East Lyme, the subject of a supplemental sewer
15 benefit assessment in 2013. A resolution approving
16 the assessments was adopted following a public hearing
17 held on March 26th, 2013."

18 A. Yes.

19 Q. First of all, based on the documents that
20 we just looked at, would you agree that the public
21 hearing was April 9th, not March 26th?

22 A. Well, I don't -- the public hearing would
23 have -- I'm just thinking, we typically, the fourth
24 Tuesday of every month is when we have our regular
25 meeting. We typically hold a public hearing in the

1 beginning of that meeting. So that fourth Tuesday
2 does look like March 26th. So that looks accurate.

3 Q. Do you recall that there was a problem with
4 the notice for March 26th, it was renoticed on March
5 27th, and the hearing was held on April 9th?

6 A. Oh, okay.

7 Q. Do you remember that happening?

8 A. I believe, yes. Yes.

9 Q. And, in fact, the documents that we looked
10 at before about the sewer benefit assessment, the
11 approval was on, the hearing for the approval was on
12 April 9th, correct?

13 A. Yes.

14 Q. As of March or April, 2013, your testimony
15 is that the East Lyme Water and Sewer Commission had
16 not committed capacity to the Gateway Development,
17 sewer capacity?

18 A. Correct.

19 Q. So was that true in your understanding as
20 of July 16th of 2014?

21 A. Yes.

22 Q. So at that point there still had been no
23 formal allocation of capacity?

24 A. Yes.

25 Q. Showing you Exhibit 24.

1 (Plaintiff's Exhibit 24

2 Marked for identification)

3 Q. Can you explain what Exhibit 24 is?

4 A. Well, applications for sewer connection.

5 Q. And what is your understanding of what the
6 purpose of these documents were? What was being
7 requested by Gateway?

8 A. A connection to the sewer.

9 Q. Okay. For a specific discharge capacity?

10 A. No.

11 Q. Just a connection?

12 A. Yes.

13 Q. Okay. Then why would there be an
14 application to physically connect without some
15 agreement as to the amount that could be discharged
16 after the connection?

17 A. Well, maybe unfortunately, but your sewer
18 use ordinance doesn't really speak to that. I don't
19 have a mechanism within the ordinance relative to
20 capacity.

21 Q. Well, you said earlier that one of your
22 jobs as, in your present position is to evaluate the
23 capacity of the sewer system, correct?

24 A. Well, okay. If I have an existing
25 infrastructure, I have an excised pipe, I have several

1 pump stations downstream, I do need to understand the
2 capacity being generated from a proposed development,
3 to not hydraulically overload the existing system, the
4 conveyance system.

5 I need to also understand what kind
6 of wastewater is being discharged into the sewer
7 system, you know, whether it be an industrial waste,
8 or domestic waste.

9 So we then can consider under the
10 connection permit application, whether it be treatment
11 or other control measures need to be put in place.
12 But we do need to understand the capacity -- the
13 proposed flow into our sewer system, so we can
14 determine whether there is a downstream impact or not.

15 Q. All right. And is it --

16 A. And that's where the engineering is
17 focused.

18 Q. Okay. And is it your practice with any
19 type of substantial new connection and discharge into
20 the sewer system to do a capacity analysis?

21 A. Yes. As it relates to the downstream
22 infrastructure, for sure, yes.

23 Q. All right, and with regard to the Gateway
24 development, when did you do that capacity analysis?

25 A. I think my -- my documents here going

1 through the calculations, understanding, requesting
2 the demands or the flow rates, is what I used.

3 Q. Okay. But can we agree that the documents
4 that were provided to you by Gateway's consultant tell
5 you how much demand they had?

6 A. Correct.

7 Q. But where was your analysis of the
8 capacity --

9 A. It was an easy answer. The -- probably the
10 most robust portion of our sewer system is where
11 they're discharging into. I have an 18 inch pipe,
12 with no pump stations downstream. So it was really a
13 non issue from the perspective of conveyance capacity.
14 So I didn't have to go through a point of modeling any
15 downstream impacts or effects.

16 I still needed to understand what the
17 flow rate is in terms of the fact is they're putting
18 in a pump station, so we want to know that the pump
19 station is going to satisfactorily be sized enough,
20 you know, that the piping that they're proposing is of
21 the right diameters, that kind of thing.

22 I mean they had to build
23 infrastructure from our current infrastructure to the
24 site. So there's length of pipe, pipe diameter, size
25 of pumps, wet well sizes, all of which I want to make

1 sure they considered when they present their flows.

2 Q. Okay.

3 A. The existing current infrastructure, that
4 was easy because it is in a fairly robust part of our
5 system.

6 Q. Okay. Mr. Kargl, is it your testimony that
7 the Gateway developers came to the Town of East Lyme,
8 specifically to the Sewer Commission, requesting
9 160,000 gallons of sewer capacity, and to you it was a
10 no brainer in 2013 or 2014, to approve that because
11 there was capacity in the system, to handle that?

12 MR. ZAMARKA: Object to the form.

13 A. The conveyance system, hydraulically is
14 what were looking at here, domestic wastewater
15 discharging into the current infrastructure was
16 satisfactory. In other words, the size of our pipes
17 are big enough to handle the proposed flow.

18 Q. Okay. But don't you also as the sewer
19 administrator, need to look at the total available
20 capacity to the Town, given the limits of the
21 treatment system, the contractual limits with the
22 State of Connecticut, the NPDES permit at the New
23 London plant? You need to do a capacity analysis of
24 how much the Town has to allocate, correct?

25 A. I don't know that I do. My water and

1 sewer -- my sewer ordinance doesn't speak to that. I
2 feel as though I'm sort of bound by what the
3 ordinance, which is more of a -- a sort of a direct
4 engineering analysis of what the system can accept.
5 You know, I --

6 Q. Let me ask you this.

7 A. I really don't -- I mean --

8 Q. Let me walk you through a couple steps and
9 see if we can agree on a method to determine how much
10 capacity the Town had when it you were discussing with
11 Gateway. Would you agree the starting point would be
12 that the Town of East Lyme has 1.5 million gallons per
13 day reserved at the New London treatment plan?

14 A. Correct.

15 Q. Would you also agree that there are
16 contracts with the State of Connecticut that total
17 478,000 gallons?

18 A. Correct.

19 Q. So the starting point really for what would
20 be available to the Town would be 1.5 million minus
21 478,000, which is, 1,022,000?

22 A. Correct.

23 Q. Okay. Now to get the amount available to
24 the Town, we would have to determine the total flow
25 from the Town to the New London treatment plant,

1 meaning the combination of flow from State facilities
2 in the Town?

3 A. Correct.

4 Q. And then the next step, would you agree,
5 would be to determine what part of that flow is from
6 the State facilities?

7 A. Uh-huh.

8 Q. That was a yes?

9 A. Yes.

10 Q. And then we would subtract the State flow
11 from the total flow, and that would give us the amount
12 available to the Town?

13 A. No. I would say no. We're contractually
14 obligated to the 478,000, so it would be our flow, the
15 current East Lyme flow, and the contract actual flows
16 subtracted from the current flow.

17 Q. I think we're --

18 A. Is that what you said?

19 Q. Yes, I think we're saying the same thing.

20 A. Okay.

21 Q. You would take the total flow, State and
22 town, and then take out the State flow?

23 A. The State contractual flow. The 478,000.

24 Q. I already took that out. I started with
25 1.5 million, and I took out the 478 right off the top.

1 That's not up for discussion.

2 A. Okay.

3 Q. So what's available to the Town out of the
4 1.5 million is 1,022,000, I think we agreed on that
5 point?

6 A. Yes.

7 Q. Okay. So then we identified the actual
8 flow of the combined, from the Town which would
9 combine the State facilities and whatever is
10 discharged by the Town?

11 A. Yes.

12 Q. That's a particular number?

13 A. Yes.

14 Q. And then if we take out of that total
15 number the part that's attributable to the State
16 facilities, we can determine how much of that flow is
17 from the Town, correct?

18 A. Correct.

19 Q. So the difference between that number and
20 1,022,000, would be the capacity available to the
21 Water and Sewer Commission to allocate to other users?

22 A. Yes.

23 Q. My question is, at any time when you were
24 evaluating the Gateway Development, did you do that
25 calculation to compare how much the Town had available

1 versus how much they were requesting for sewer?

2 A. I don't believe I did.

3 Q. Why not?

4 A. I'm not sure why I didn't do it. I
5 probably -- I hate to say this but it's probably
6 almost irrelevant to -- to, you know, my review of the
7 connection. I mean I would look at that, you know, I
8 would -- I mean I didn't physically write that down or
9 do that anywhere, that I'm aware of.

10 Q. Okay. If one of your jobs is, with the
11 Town of East Lyme is to make sure that the Town does
12 not exceed its contractual or discharge limits, how
13 could you evaluate a request for 160,000 gallons of
14 sewer capacity and not do that calculation?

15 MR. ZAMARKA: Object to the form.
16 You can answer.

17 Q. Do you have the question?

18 A. Yes, I have the question. I understand the
19 question.

20 Q. What's your answer?

21 A. Well, I -- I don't physically have that
22 calculation in my files. I probably would have done
23 that calculation.

24 Q. You said it was a no brainer and you didn't
25 need to do a calculation?

1 A. Not from the availability of contractual
2 capacity, just from the conveyance perspective of the
3 existing sewer system.

4 Q. So your testimony is that from the physical
5 standpoint of the conveyance capacity, it was a no
6 brainer because of the size of the pipes and the
7 capacity of the pump station?

8 A. That's correct.

9 Q. Okay. But you did not do a calculation
10 comparing what Gateway was asking for versus the
11 capacity available to the Town after accounting for
12 the State facility flows, you didn't do that
13 calculation?

14 MR. ZAMARKA: Object to the form.
15 You can answer.

16 A. I did not.

17 Q. I'm going to show you Exhibit 28.

18 (Plaintiff's Exhibit 28
19 Marked for identification)

20 Q. This is the Water and Sewer Commission's
21 Landmark Resolution from March 11th of 2014. You've
22 seen this document before, correct?

23 A. Yes.

24 Q. In fact, when we were looking earlier at
25 your March 17th, 2014 letter to Gateway, you told them

1 that sewer was available for their proposed
2 development?

3 A. Yes.

4 Q. And in the middle of page 2, it says
5 "Whereas the Commission finds that the Town has
6 between 130,000 and 225,000 gallons per day of
7 remaining sewage treatment capacity." Let me first
8 ask you, was that statement accurate as of March,
9 2014?

10 A. I believe it is. Or was.

11 Q. Then can you explain to me why you would
12 write a letter on March 17th, 2014, telling the
13 Gateway applicants that there was availability when
14 they had given you a calculation of 160,000 gallons as
15 their need?

16 A. Well, again, I was not writing that letter
17 in the context of available capacity. I was writing
18 that letter in the -- relative to available
19 infrastructure.

20 Q. Was it anyone else's job in the Town of
21 East Lyme to tell applicants like Gateway that there
22 is limited or unavailable sewer capacity? It's your
23 job, isn't it?

24 A. I would say it is my job, yes.

25 Q. So in the month of March, 2014, you

1 believed that this calculation on Exhibit 28 is
2 accurate, and yet you told Gateway that they could
3 have 160,000 gallons?

4 A. Well, I told them that they had the ability
5 to connect to the sewer system. There was no
6 discussion -- or not in the context of available
7 capacity.

8 Q. Okay. So you told them that they could
9 connect to the system without doing a calculation as
10 to whether the Town had the available capacity to that
11 amount; is that your testimony, Mr. Kargl?

12 A. Yes.

13 Q. Okay. I show you Exhibit 29.

14 (Plaintiff's Exhibit 29

15 Marked for identification)

16 Q. Do you recall in October of 2014, going
17 through a series of calculations relating to
18 Landmark's request for sewer capacity?

19 A. Yes.

20 Q. And this Exhibit 29 says at the lower
21 right, item D, you did these calculations, correct?

22 A. I don't know if I personally did those.
23 This was a collaborative effort.

24 Q. You were involved?

25 A. I was involved.

1 Q. And you remember there were calculations,

2 A, B, C and D?

3 A. Yes.

4 Q. And ultimately the Commission adopted
5 calculation D? I'm going to pull that back because I
6 think we photocopied the wrong page. I copied the
7 wrong page. Did you believe that calculation D was a
8 correct way to evaluate the allocation of sewer
9 capacity?

10 A. May I see the calculation again? Is that
11 what was just handled to me?

12 Q. This is the type of calculation but this is
13 calculation C.

14 A. Okay. It's not a perfect world. We tried
15 to -- part of the problem was coming up with a
16 methodology to try to come up with a -- sort of an
17 equitable analysis.

18 Q. Okay. In general, do you remember that
19 calculation D, if we can write this as a formula, the
20 Commission took 358,000 gallons per day, accepting
21 Landmark's request in that regard, correct?

22 A. Uh-huh. Yes.

23 Q. And then it was determined that the acreage
24 in the sewer district townwide was 5,853 acres. Do
25 you remember?

1 A. Yes.

2 Q. And then on the right side of the
3 calculation there was X on the top, and the Commission
4 used the full acreage of the Landmark property which
5 is 236, and that was the calculation that resulted in
6 14,434 gallons per day?

7 A. Yes.

8 Q. Have you done a calculation of this type
9 for the Gateway Development?

10 A. No.

11 Q. Why not?

12 A. Well, it was never -- it was never
13 requested within that context to do that.

14 Q. Would it surprise you to know that if you
15 substitute 160 acres for Gateway for the 236, that the
16 result is less than 10,000 gallons?

17 A. I'm not surprised.

18 Q. At this point in the -- from 2012 to today,
19 would you confirm that the sewer flows of the Town of
20 East Lyme to the New London treatment plant have
21 either been, the total flows have either been flat or
22 slightly declining?

23 A. Yes.

24 Q. And as a matter of fact, am I correct that
25 in 2015, you have seen some of the lowest monthly

1 flows that you've seen in many years?

2 A. Yes.

3 Q. And certainly there's nothing, there's been
4 nothing in the last three years that would indicate an
5 increase, much less a steep increase in sewer flows?

6 A. Correct.

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25 Q. My question is, what action of yours or of

1 the Town in your understanding gives Gateway a right
2 that the Town can't take away to discharge to the
3 sewer system? At what point does that occur?

4 A. Well, there is a -- and I think they filed
5 this, there's a registration with the Department of
6 Environmental -- Department of Energy Environmental
7 Protection for a discharge that they have to go
8 through. I don't know if that's all been completed
9 yet, but that would be, you know, part of it that we
10 would need to eventually have.

11 I think they pursued that and, you
12 know, I think it's a general permit or permit to
13 discharge; any time it exceeds a specific amount. So
14 we would require that.

15 Q. All right. Let me ask it this way. You
16 said that in March of 2014, you gave Gateway a letter
17 that said sewer is available to your property, but
18 that letter was not a commitment to a specific
19 capacity, correct?

20 A. Correct.

21 Q. You just said that they have a right to at
22 least discharge from what they are building today.
23 Where did they, if I can use the phrase, cross the
24 line, to having a right to discharge into the sewer
25 system what they're building today? What action, from

1 your office or the Town or the Sewer Commission, gave
2 them that right?

3 A. Well, they applied for a connection, and
4 with that they essentially were permitted to make
5 connection. So that gives, you know -- we're not
6 gonna not allow them to flow, if we didn't give them
7 the ability to connect.

8 Q. And that was in May of 2015?

9 A. Those connection permits, probably so.

10 Q. All right. That's exhibit --

11 A. Actually it was before that. Yeah, that's
12 correct.

13 Q. Okay. You're not aware of any sewer
14 connection permit prior to May of 2015?

15 A. That's right.

16 Q. And that's just for the record, Exhibit 24.

17 A. Correct.

18 Q. One more set of questions. During
19 Landmark's sewer appeals, the Sewer Commission has
20 referred to three areas; Latimer Brook, Gorton Pond
21 and Saunders Point. Are you familiar with those
22 areas?

23 A. I'm familiar with those areas.

24 Q. Okay. In any of those three, is there an
25 activity right now aimed at connecting residences or

1 other users within those areas to the sewer system?

2 A. Yes.

3 Q. Which one?

4 A. Saunders Point.

5 Q. And what is the status and how big is that?

6 A. We are in the initial stages of conducting
7 a facilities plan for sewerage Saunders Point.

8 Q. And what is there? Is there an estimate of
9 how much sewer capacity --

10 A. No. That's the purpose of the planning
11 study, is to define the potential routes, or the
12 potential route of the sewer, the ultimate cost of the
13 sewer per property owner, and the estimated, you know,
14 flows that could be generated from that.

15 Q. And who is doing that study?

16 A. Once it gets started, it will be conducted
17 by Weston & Sampson.

18 Q. Let me go back to what you said about
19 evaluating the Gateway discharge. You said that from
20 a conveyance standpoint, that you saw no problem with
21 their request. Isn't it true that there is only
22 ultimately one discharge point from the Town of East
23 Lyme through Waterford to the New London treatment
24 plan?

25 A. Correct.

1 Q. So eventually if there were sewer flows
2 from Landmark, they get co-mingled from the flows from
3 Gateway?

4 A. Anything else, yes, correct.

5 Q. So when you're talking about the conveyance
6 capacity, you're speaking about the Gateway
7 Development itself, to the pump station at the --

8 A. All the way to the point where it leaves
9 East Lyme.

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Tab 2

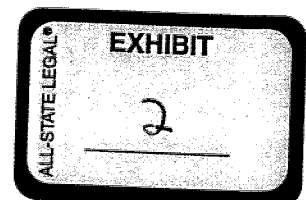
NO. HHD LND CV 15 6056637S	:	SUPERIOR COURT
	:	
LANDMARK DEVELOPMENT GROUP LLC	:	
AND JARVIS OF CHESHIRE LLC	:	JUDICIAL DISTRICT
	:	OF HARTFORD
v.	:	LAND USE DOCKET
	:	
EAST LYME WATER AND SEWER	:	
COMMISSION	:	JUNE 1, 2015

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT WATER AND SEWER COMMISSION**

Pursuant to Practice Book § 13-9, plaintiffs Landmark Development Group LLC and Jarvis of Cheshire LLC (collectively "Landmark") hereby request that the defendant East Lyme Water and Sewer Commission (the "Commission" as defined in Definition K below) produce the following documents.

INSTRUCTIONS

A. Production of documents, unless otherwise specified or agreed upon by counsel, is to be made at Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103, within 30 days of service. If the documents are or were created, kept, maintained, received, or stored in electronic format (electronically stored information or ESI), Landmark requests production of documents in native format (with metadata) with corresponding hash values. ESI includes but is not limited to (i) email; (ii) metadata, which is information about emails or word processing documents; and (iii) information contained on backup tapes or other storage devices that are capable of restoration, even if the information was deleted previously. Defendant is, therefore, required to produce information, including but not limited to emails, which may have been previously deleted, if such information is contained on backup tapes or other storage devices that



are capable of restoration. Responsive emails may be found within work email accounts, as well as any personal email accounts that may contain work-related email.

If the documents were originally created or received in paper format, and are kept, maintained, or stored only in paper format, Landmark requests production of the documents in electronic format (searchable PDF format for each document to be produced; searchable multi-page PDF format for each document to be produced that is more than one page in length) with an identifying Bates number.

B. These requests for production are to be considered continuing in nature so as to require supplemental answers within a reasonable period of time if additional information or documents are obtained by the Commission or its counsel that will change, modify or augment the Commission's initial answer or production.

C. With respect to any information or document which is withheld in whole or in part on the ground of privilege, state with regard thereto:

1. the subject matter of the information or of the document;
2. the type of document for which the privilege is claimed (*e.g.*, letter, memorandum, etc.);
3. the date of the document or information;
4. the author of the document or the communicator of the information, including the specific capacity in which such person acted in doing same;
5. the identity of each person who received the original or a copy thereof of the document or to whom the information or contents of the document was communicated, including the specific capacity in which such person received the document or information; and
6. the nature and specific basis for the claim of privilege, including why such basis applies to the document or information in question.

D. Where documents are claimed to be outside the possession of the Commission, please describe all efforts by the Commission to obtain or locate the requested documents, identify the name and address of the person or entity who the Commission believes currently has possession, custody or control of the requested documents; and provide all information contained in the documents of which the Commission has knowledge in lieu of producing the requested documents.

DEFINITIONS

A. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) by any means, including, without limitation, by e-mail or other electronic means.

B The term "concerning" means relating to, referring to, describing, evidencing or constituting.

C. The term "document" includes, but is not limited to, the originals and all non-identical copies (*i.e.*, different from originals by reason of notations made on or attached to such copies or otherwise) of all letters, telegrams, contracts, e-mails, memoranda, intra- or inter office memoranda, papers, notes, minutes, reports, studies, calendar and diary entries, maps, sketches, drawings, reproductions, photographs, advertisements, pamphlets, periodicals, books, graphs, charts, tabulations, analysis, working papers, indices, statistical or information accumulations, data sheets, data processing cards, tapes, electronically stored information, sound recordings, computer printouts, notes or recollections of interviews, notes or recollections of conferences, notes or recollections of telephone calls, notes or recollections of meetings, notes or recollections of any other type of communication, drafts or preliminary revisions of all of the above; and any other written, printed, typed or other graphic matter of any nature, no matter how produced or reproduced. Any comment or notation appearing on any of the documents described above, and not a part of the original text, is considered a separate document and any draft or preliminary form of any document is also considered a separate document.

D. The term "person" includes natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (*i.e.*, as a committee, board of directors, etc.), corporations, the federal government, state governments, local governments, governmental agencies, or any other incorporated or unincorporated business or social entity.

E. Information "relating to" any given subject means all materials that constitute, contain, embody, reflect, identify, state, support, evidence, refer to, deal with, or are in any way pertinent to that subject.

F. Whenever appropriate, the singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular.

G. Whenever appropriate, "he" or "his" shall be interpreted as "she" or "her."

H. "And" and "or" shall be construed disjunctively or conjunctively as necessary to make the request inclusive rather than exclusive.

I. The terms "all" and "each" shall both be construed as all and each.

J. The term "supporting" shall refer to and mean to provide a basis for, to tend to support and/or to be believed to support.

K. "Defendant" or "Commission" means the defendant East Lyme Water and Sewer Commission and its staff, agents, servants, attorneys, representatives, and all other persons (as defined herein), acting, understood to act, or purporting to act on its behalf or under its direction or control.

L. "Plaintiffs" or "Landmark" means the plaintiffs Landmark Development Group LLC and Jarvis of Cheshire LLC and its agents, servants, attorneys, representatives, and all other persons (as defined herein) acting, understood to act, or purporting to act on its behalf or under its direction or control.

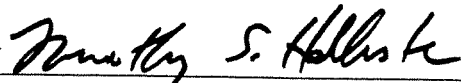
M. "You" and "your" mean the defendant.

REQUESTS FOR PRODUCTION

1. All documents, whenever created, relating in any way to (a) any formal or informal request, submission, application or plan (including specification of bedroom counts and pipe sizes) for sewage discharge, transmission, or treatment; (b) any formula, criteria, procedure, approval, grant, allocation, or confirmation of sewage discharge, transmission, or treatment capacity; (c) any connection or hook up approval for sewage discharge, transmission or treatment; or (d) any sewer benefit assessment, financial/financing agreement or guarantee, or other financial document, for a multi-family residential development in the Town of East Lyme known as "Gateway."

RESPONSE:

PLAINTIFFS,
LANDMARK DEVELOPMENT GROUP LLC
AND JARVIS OF CHESHIRE LLC

By 
Timothy S. Hollister
thollister@goodwin.com
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919
PHONE: (860) 251-5000
FAX: (860) 251-5318
Juries No. 057385
Their Attorneys

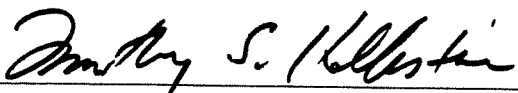
CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Request for Production of Documents was mailed, postage prepaid, or electronically mailed, June 1, 2015, to:

Edward B. O'Connell, Jr., Esq.
Mark S. Zamarka, Esq.
Waller Smith & Palmer, P.C.
52 Eugene O'Neill Drive
P. O. Box 88
New London, CT 06320

Paul M. Geraghty, Esq.
Geraghty & Bonnano, LLC
38 Granite Street
P. O. Box 231
New London, CT 06320

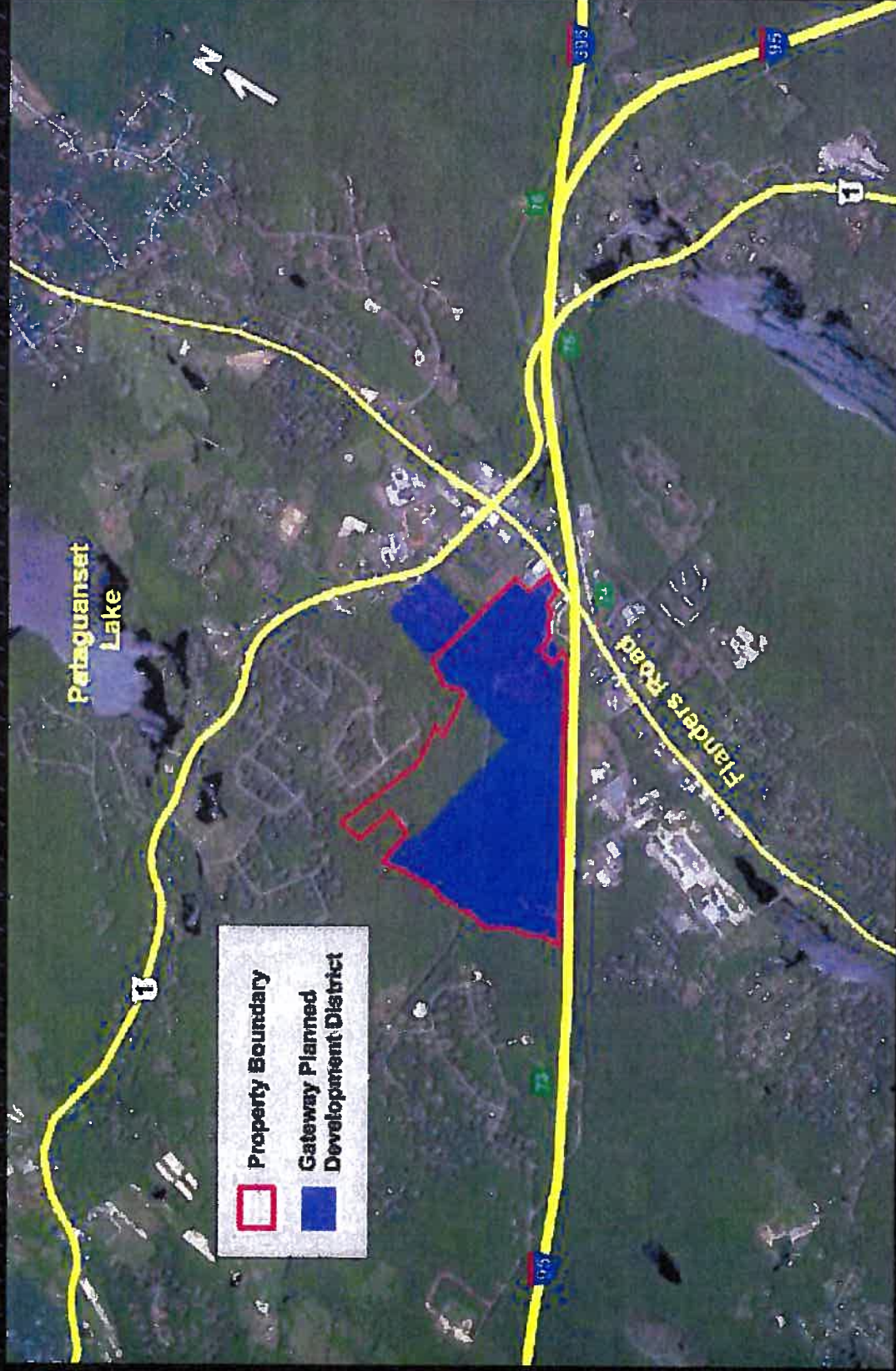
Jason D. Westcott, Esq.
jdwestcott@hotmail.com
One Post Hill Place
Suite 3
New London, CT 06320


Timothy S. Hollister
Commissioner of the Superior Court

Tab 3

Gateway Planned Development District - Aerial View

15 January 2008



ALL-STATE LEGAL®
EXHIBIT
3

GATEWAY COMMONS
East Lyme, CT

KGI Properties / SK Properties Development
Arrowstreet Architects / BL Companies

Gateway Commons Development Plan

03 May 07



GATEWAY COMMONS
East Lyme, CT

KGI Properties / SK Properties Development
Arrowstreet Architects / BL Companies

Residential Development Plan

03 May 07

"ORIGINAL PLAN"



GATEWAY COMMONS
East Lyme, CT

KGI Properties / SK Properties Development
Arrowstreet Architects / BL Companies

Retail Parcel Development Plan

03 May 07



"ORIGINAL PLAN"

GATEWAY COMMONS
East Lyme, CT

KGI Properties / SK Properties Development
Arrowstreet Architects / BL Companies

Tab 4

GPDD PARCEL DATA

EAST LYME TAX ASSESSOR MAPS

EAST LYME PROPERTY ADDRESS

MAP	LOT	
25	35	Ancient Highway
26	2	286 Flanders Road
31	1	Flanders Road
31.1	10	156 Boston Post Road
31.1	11	4 Church Lane
31.1	12	10 Church Lane
31.1	13	14 Church Lane
31.3	1	284 Flanders Road
31.3	2	282 Flanders Road
31.3	3	280 Flanders Road
31.3	4	288 Flanders Road
31.3	5	294-2 Flanders Road
31.3	6	300 Flanders Road

The proposed GPDD zoning district is further delineated and described as follows:

Boundary Description

Gateway Planned Development District

Beginning at a point in the southerly line of Boston Post Road at the northeast corner on Lot 10, Tax Map 31.1, and the northeast corner of Lot 9, Tax Map 31.1. Thence southerly 960 feet ± along the easterly line of Lot 10 & Lot 11, Tax Map 31.1, to the southeasterly corner of Lot 11 Tax Map 31.1, said point being the southwesterly corner of Lot 9, Tax Map 31.1 and a point in the northerly line of Lot 5, Tax Map 31.3. Thence easterly 925 feet ± along the southerly line of Lot 9, Tax Map 31.1, to a point in the northerly line of Lot 6, Tax Map 31.3, said point being 320.25 feet of the westerly line of Flanders Road. Thence southerly 265 feet± along a portion of Lot 6, Tax Map 31.3, to a point in the northerly line of Lot 5, Tax Map 31.3, thence easterly 252.55 feet along the southerly line of Lot 6, Tax Map 31.3, to the westerly side of Flanders Road and the southeast corner of Lot 6, Tax Map 31.3, and the northeast corner of Lot 5, Tax Map 31.3. Thence southerly 420 feet ± along the westerly line of Flanders Road along the easterly lines of Lots 4 & 5, Tax Map 31.3, Lot 1, Tax Map 31 and Lot 2, Tax Map 26, to land of State of Connecticut (CT Route 95). Thence in a southwesterly direction along the westerly line of land State of Connecticut (CT Route 95) and the easterly line of Lot 2, Tax Map 26 and Lot 35, Tax Map 25, 4665 feet ± to the centerline of abandon road known as Ancient Highway. Thence in a northwesterly direction along the centerline on an abandon road known as Ancient Highway 2700 feet ± .. Thence easterly 420 feet± along Lot 3, Tax Map 30, to Lot 1, Tax Map 31. Thence southerly 120 feet± along Lot 1,

Tax Map 31. Thence easterly along Lot 1, Tax Map 31, 2000 feet \pm to the centerline of Pattagansett River. Thence in a northwesterly direction 1350 feet \pm along the centerline of Pattagansett River through a portion of Lot 1, Tax Map 31, along the westerly line of Lot 44, Tax Map 30.4, to a point in the southerly line of Lot 14, Tax Map 31.1. Thence easterly, northerly, easterly 275 feet \pm to the southeast corner of Lot 14, Tax Map 31.1 and the southwest corner of Lot 13, Tax Map 31.1. Thence northerly 980 feet \pm along the easterly line of Lot 14, Tax Map 31.1, to the southerly line of Church Lane and the northwest corner of Lot 13, Tax Map 31.1. Thence easterly along the southerly line of Church Lane and Boston Post Road 710 feet \pm to the northeast corner of Lot 10, Tax Map 31.1 and the point of beginning.

Said herein above described is more particularly shown on the following East Lyme Assessor's Tax Maps

Map	25	Revised Thru	10/1/99
Map	26	Revised Thru	10/1/99
Map	31	Revised Thru	10/1/99
Map	31.1	Revised Thru	10/1/99
Map	31.3	Revised Thru	10/1/98

A copy of the above noted proposal, including maps are available for public review in the East Lyme Town Clerk office and the East Lyme Zoning Department.

Please publish this notice on January 19, 2001 and again on January 29, 2001. Thank You.

Please Check E-Mail

Any questions please call

Carmen 691-4114 or

Email caames@eltownhall.com

Tab 5

FILED IN EAST LYME
Feb 6, 2003 AT *12:40* M
L.A. Blais ATC
EAST LYME TOWN CLERK

**EAST LYME WATER & SEWER COMMISSION
REGULAR MEETING
JANUARY 28, 2003
MINUTES**

A REGULAR MEETING of the East Lyme Water & Sewer Commission was held January 28, 2003 at 7:30 PM at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT. Mr. Sistare called the meeting to order at 7:30 AM

Present: Kent Sistare, Joseph Mingo, Ed Ramatowski, Steve DiGiovanna, Mary Cahill, Michael S. Tinkel and H. Tisler

Also Present: F. Thumm, M. Poola, Atty. E. O'Connell, R. Pape.

Absent: Charles Ashburn and Dave Zoller

GENERAL

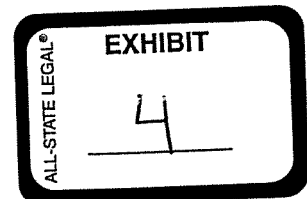
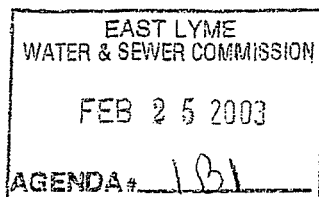
MOTION (1) Mr. DiGiovanna moved to add the Sewer Consent Calendar Weston & Sampson Invoice of \$1,848.75
Seconded by Mr. Tinkel
Vote in favor: (7-0), Unanimous

DELEGATIONS

Edward Dzwilewski, 90 North Bride Brook Rd. stated he hooked into the Water System 6-7 months ago and has had brown water since. Mike Poola and Fred Thumm have both been involved in the problem. He indicated his neighbors have had the same problem and he has been buying water. He wanted to know what could be done about it. He would like someone to get back to him on what is going to be done.

APPROVAL OF MINUTES

MOTION (2) Mr. DiGiovanna moved to approve the Minutes of November 26, 2002
Mr. Tisler seconded the motion.
Vote in favor: (7-0), Unanimous.



Mr. Mingo stated that he questioned the reasons for making this presentation if Walnut Hill is not requesting a community septic system. Mr. Harris stated that at this time the developer has decided to go with this system for the clubhouse and wanted to acquaint the Commission with the system because there is the potential that the develop would come back to the Commission and request consideration of this system for a community system.

Mr. Katz added that he wanted to work closely with the town and provide the town with information upfront so that the Commission is familiar with the system. He added that he has worked with East Lyme and Montville over the past year and a half and anticipates a \$20 million development.

2. Discussion of Sewer Shed Boundary

Mr. Thumm presented a map of the sewer shed and in discussion with Atty. O'Connell and First Selectman, an annotation has been placed at the property north of I-95 and west of Route 161. He pointed out that the contour of the sewer shed boundary does not include the entire parcel. He indicated it was always the intent that parcel, fronting on Route 161, be in the sewer shed. He indicated that this is a technical correction.

Mr. O'Connell added that the boundary of the sewer shed consistent with the property lines. He recommended that staff prepare a current map of the sewer shed incorporating this corrected boundary line and then present it to the Commission at a subsequent meeting.

Mr. Ramatowski stated the sewer shed map should be signed and the boundary indicated as a change. Mr. Tinkel also challenged the process of correction as rather a revision.

Mr. Thumm stated that this is a clarification incorporated into the map to make a correction to a divided property. He noted that this map is the "base sewer shed map" as approved by this Commission 1999, drawn by Melodie Osterhaut and check by Mr. Thumm. If this motion is approved, a new original map will be prepared based on this map and annotation. The new original map will be signed, dated, and noted as restated through January 2003.

MOTION (8) Mr. Mingo moved RESOLVED, that the Water and Sewer Commission affirm and restate its sewershed boundaries by reference to a map presented to it on this date, which map contains technical corrections to more accurately reflect the sewershed boundaries adopted by the Commission, as annotated by Fred Thumm and dated January 28, 2003
Mr. DiGiovanna seconded the motion.
Vote in favor: (5-2-0), Voting against the motion: Mr. Ramatowski and Mr. Tinkel. Voting in favor of the motion: Mr. DiGiovanna, Mrs. Cahill, Mr. Tisler, Mr. Sistare, Mr. Mingo.

E. Communications

F. Chairman's Report

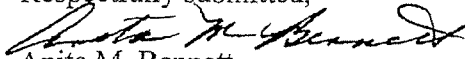
G. Information and Reports

1. Balance Sheet – Construction
2. Balance Sheet – Operations
3. Balance Sheet – Assessments
4. Monthly Budget Sheet.

Adjournment

MOTION (9) Mr. DiGiovanna moved to adjourn at 9:15 PM
Seconded by Mr. Ramatowski.
Vote in Favor: (7-0), Unanimous.

Respectfully submitted,



Anita M. Bennett
Recording Secretary

Tab 6

20. 10/24/06
10/24/06

BL Companies John Whitcomb
Gateway Project.
Rte 161 Flanders Rd.

① Water (Must Investigate)

- 1.) Reduction in Demand
- 2.) Source of Supply
- 3.) Additional Storage (Multiple Day)

Est. 50,000 gpd based on

$$514,000 \text{ SF} \times 0.1 \text{ gpd/SF}$$

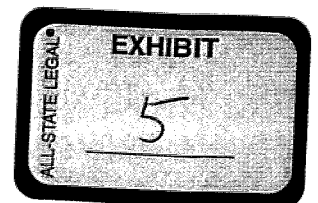
$$= 51400 \text{ gpd}$$

Infrastructure 16-in cm

② Sewer

w/in 5 years - 1.5 mgd reach/exceeded

- 1.) Reverse
- 2.) Infrastructure 18-in PVC



Tab 7

Gateway Commons Development Plan

15 January 2008



GATEWAY COMMONS
East Lyme, CT

ALL-STATE LEGAL
EXHIBIT
8

KGI Properties / SK Properties Development
Arrowstreet Architects / BL Companies

Residential Development Plan

15 January 2008

"REVISED PLAN"



GATEWAY COMMONS
East Lyme, CT

KGI Properties / SK Properties Development
Arrowstreet Architects / BL Companies

Retail Parcel Development Plan

15 January 2008



GATEWAY COMMONS
East Lyme, CT

KGI Properties / SK Properties Development
Arrowstreet Architects / BL Companies

Tab 8

77

**EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Friday, JULY 25th, 2008
MINUTES**

The East Lyme Zoning Commission held a Public Hearing on the Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for approval of a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1, 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11, and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7 on Friday July 25, 2008 at the Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 7:35 PM.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Norm Peck, Marc Salerno, Ed Gada, Bob Bulmer, Alternate

ALSO PRESENT: Attorney Theodore Harris, Representing the Applicant
Jay Fisher, SK Properties
Chris Knisley, KGI Properties
Brad Parsons, BL Companies
John Mancini, BL Companies
Bill Sweeney, TCORS
Michael Wang, Arrowstreet
William, Dwyer, Alternate
William Mulholland, Zoning Official

ABSENT: Steve Carpenteri, Gregory Massad, Alternate

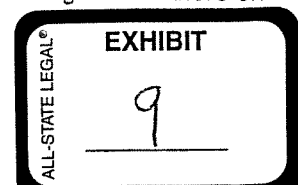
PANEL: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,
Norm Peck, Marc Salerno, Ed Gada, Bob Bulmer, Alternate

Pledge of Allegiance
The Pledge was observed.

Public Hearing I

1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for approval of a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7

Chairman Nickerson opened this Public Hearing and called it to order at 7:35 PM. He noted that Mr Carpenteri was not present this evening and that he had seated Bob Bulmer, Alternate at the table. He explained how the Public Hearing process works, apologized for the clerical error that brought them there on



a Friday evening and thanked the Board of Ed and Mr. Smotas for covering part of the costs of having the facility open this evening and staffed with custodial personnel who otherwise would not be there with the schools closed during the summer. He then said that First Selectman Paul Formica was present this evening and that he has invited him to first say a few words on the water issues that have been in the news recently

Paul Formica, First Selectman thanked the Commission for having him and said that he would like to say a few words as Chairman of the Water & Sewer Commission. He said that he would first speak on the Water Moratorium and explain how it works and how water is distributed. The Town has seven (7) wells that pump from aquifers and that are permitted by the DEP. The Town uses approximately 3M gpd (gallons per day) and they have two (2) water tanks that hold 1.5M gallons of water each. Two of the wells are controlled by DEP permit and when the stream flows become low, the DEP kicks in and does not allow pumping from them. These two wells provide 900,000 gpd of water and the only times that they have trouble with water in Town has habitually been in the end of July and sometimes in early August and then the problem goes away.

The DEP restrictions that have been put in have been in place for at least 12 years now and the Town has acted accordingly. What has not been done has been to address this problem. They currently have two wells being replaced and expect to gain some 150,000 gpd just by doing this. Some of the other efforts that are being worked on are 200,000 gallons as a reserve from another water source and a regionalization plan to Waterford or Montville which appears to be the way to go. However, that does not come cheaply. Last week they went out for some bonds and they are paying 1.66% so, if they must bond for this, it is a good time to do so. The State is forcing us to regionalize however, we must also be chlorinated and that is also in progress and being worked on. By the time next July comes around, he said that he hopes to have an emergency reserve in place. Along with this, everyone will have to change their habits a bit and develop good conservation efforts. Last Sunday, they had the highest water demand in the history of the Town at 3.5M gpd and they turned on the two wells that had been turned off to meet this demand. They average 2.6M gpd Monday thru Thursday – with the call for conservation efforts out to the public; they went to 2.3M gpd and then 2.1M gpd by midweek. These conservation efforts combined with the increased supply will allow them to continue to do business as usual in East Lyme. He said that they also still have a good argument with the DEP on the stream flow concept regarding the fish going back up in July as many environmentalists have also weighed in on this and feel that it does not happen.

Mr. Bulmer asked if they tie into another water system how much more water they would be able to get. Mr. Formica said that there are millions of gallons available once they are connected regionally. For the long term, a desalination plant at Camp Rell would really be the answer as they would rather be a water seller than a water buyer.

Mr. Nickerson said that if this project is some three to four years in build out at minimum, and while this is not a topic for them tonight, it seems that they should be ahead of the curve when this comes on-line. Mr. Formica said that what Water & Sewer asks when people come forward is how much water they will need and there is plenty of opportunity between now and then to move on other resources.

Ms. Carabelas asked when it is the proper time for Water & Sewer to ask the developer to have their own wells on-site.

Mr. Formica said that they have been asking that all along – that developments have their own on-site wells to use for irrigation, flower watering, etc. He added that they have also divided the Conservation Commission and that they now have a branch of it that can take up the 'green' initiative.

Mr. Nickerson thanked Mr. Formica for coming and providing them with information and called upon the Applicant's representative for their presentation.

Attorney Theodore Harris, place of business 351 Main Street asked that Mr. Nickerson note that the legal ad had run

Mr. Nickerson said that the Legal ad had run in the Day. (on July 11, 2008 and July 21, 2008)

Attorney Harris continued that they were here for the Master Development approval – the second step in a process which started well over two (2) years ago. During this process they have had several meetings with the neighborhoods and community groups as well as the downtown merchants and business groups – all of which participated in making the Plan what it is today. This is the second phase and there is an extensive list

of items that have to occur in this process. They just heard the Chairman of Water & Sewer talk about water and they are aware that this property is served by public water and sewer and that the availability is there. The earliest demand would be late 2010 or early 2011 and that would be a minimal demand that would only gradually increase over time. With respect to irrigation of the green areas; they will irrigate with their own on-site well and not with Town water. They are also looking towards the possibility of a well on their site that could turn water over to the Town. Regardless they know that water & sewer is available to the site and they know that they have to work with Water & Sewer on it. He then introduced Brad Parsons from BL Companies to present the existing conditions.

Brad Parsons, BL Companies presented **Exhibit 1** for the record - a site plan board depicting the Existing Conditions plan dated 7/24/08. He noted that what he was submitting comprised 90% of the Gateway Development District.

Michael Wang, Principal with Arrowstreet presented **Exhibit 2** for the record – SK Dev. Properties Gateway Commons Concept Plan dated 6/4/08. This conceptual layout plan works according to the test amendment depicting the retail space for the one large and other junior anchors and the 20,000 sf of office space on the second floor as requested by Mr. Salerno at the workshop. It also shows the removal of 125 residential units leaving 275 units and freeing up open space to the Rose cliff residential area which will remain as open space. He also noted that there was a reconfiguration of the greenway shopping area as the Commission had requested in the workshop. He then presented **Exhibit 3** for the record depicting the Retail Open Space Plan dated 11/15/07. He said that they also studied the public open space and designed it to be user friendly. There will also be the office space over the retail and the five junior anchors have been changed to four junior anchors.

Brad Parsons presented **Exhibit 4** for the record – the Overall Transportation Improvements Plan dated 7/24/08. He noted the infrastructure and phasing issues and said that the plan shows:

- ◆ The relocated Exit 74
- ◆ The frontage road improvements to Rte. 161
- ◆ The connection to Rte. 1
- ◆ Rte. 1 and Rte. 161 improvements and interconnection
- ◆ Site frontage road with connection to East Society to Dean Road

Jay Fisher, Principal with SK Properties explained that at this point they will connect out to and through East Society and improve this road to road standard.

Mr. Mulholland said that this gives four points of access and egress to the property.

Mr. Fisher said yes.

Mr. Bulmer asked about access to Route 1.

Mr. Fisher said that they are working on that as one of the possible legs of this development.

Mr. Parsons submitted **Exhibit 5** for the record – the Construction Phasing Plan dated 7/24/08.

Mr. Gada asked about the access road to Exit 74 and Exit 73 and if they are only connections or if they would have businesses on them.

Mr. Fisher said that there would not be any businesses on them – they are strictly access/egress roads.

Mr. Parsons explained the construction phasing plan noting that the Exit 74 interchange is Phase 1 which would include the large format retail while Phase 1A would have the junior anchors and some smaller shops. Phase 2 would be the apartment areas and some housing and Phase 2A would be the rest of the housing.

Mr. Nickerson asked if they would start Phase 1A prior to Phase 1 being completed.

Mr. Parsons said no, they need the infrastructure in place first before they do anything else.

Mr. Nickerson said that he wanted to make sure that the houses do not come before everything else.

Bill Sweeney, Certified Land Planner with TCORS said that phasing makes it clear that the project will be phased and that the developer is responsible for the infrastructure at each phase and if it deviates they would have to come back for approval of the Commission to do so.

Attorney Harris said that Phase 1 could start (although it is premature at this point) in the late summer of 2009 and would take more than a year to complete.

Mr. Bulmer asked about the living units and if that has changed or if it is the same.

Mr. Fisher said that there are 275 residential units (down from 400) and that they are comprised of 225 apartments and 50 town homes.

Mr. Bulmer asked according to the Rutgers study – how many children they would anticipate.

Mr. Sweeney said that nothing has changed from the time of the Klepper-Smith study and he believes that said that there would be 43. He continued that the architectural standards document has been revised many times and changed and that it is key to the MDP project as it becomes the guidebook and tool of control. The standards are what the submissions are judged by. These regulations take the place of the Zoning regulations for the purposes of this project and only where necessary for this project. The standards are also binding on whoever occupies the properties. The standards discussed in the submitted binder are:

- ◆ Permitted Uses
- ◆ Bulk and Dimensional requirements
- ◆ Parking & Loading
- ◆ Streets & Sidewalks
- ◆ Landscaping & Screening
- ◆ Lighting – Night sky provision
- ◆ Signage – Indirect, backlit or no lighting
- ◆ Open space & Conservation areas
- ◆ Miscellaneous Provisions – utility lines, aquifer protection, etc.
- ◆ Architectural Styles – Michael Wang of Arrowstreet submitted the following Exhibits for the record on architectural styles: **Exhibit 6** – Gateway Commons Architectural Styles; **Exhibit 7** – Massing & Scales; **Exhibit 8** – Materials & Colors; **Exhibit 9** – Rooflines & Profiles and **Exhibit 10** – Three pages of Materials & Colors providing requirements and samples of materials – masonry, glass fiber materials etc.
- ◆ Massing & Scale
- ◆ Materials & Colors
- ◆ Rooflines & Profiles
- ◆ Typical Building Facades & Elevations

Mr. Sweeney noted that the designs are only samples.

John Mancini, Principal Engineer with BL Companies explained the detailed traffic study which was a requirement of this phase and which was submitted with the application. He said that the report is an executive summary and that the purpose is to provide an acceptable level of service and that they have met or exceeded those levels of service. He said that while left turns are the most difficult to make anywhere that they will pursue a light as has been requested by Mr. Mulholland and Mr. Scheer.

(Note: a brief break was taken here)

Attorney Harris suggested that they take questions from the Commission and then hear from the public.

Mr. Peck asked about the frontage road and if in passing through the residential units will any of them be accessed from the main drag.

Mr. Wang said that the quick answer is that they are all accessed off of the secondary roads and that they do not have any direct access.

Mr. Peck asked under building materials what the definition of 'finished masonry' was.

Mr. Wang said that term was used to insure there would not be just plain concrete units and that they would be brick-faced and mixed.

Mr. Peck asked about the traffic and said that in the interests of simplicity if they could take the different sections and provide some traffic counts as his concern was the term 'acceptable condition'.

Mr. Mancini said that the information is summarized in the charts in the report that they were provided with the application. The term 'acceptable' is appropriate when discussing traffic and the level of service

measures the delay by use of nationally understood standards. Most of the roads that they are dealing with are State roads so they are dealing with the terms as they are written. The only local road is East Society.

Mr. Nickerson asked if the traffic study considered the fact that Exit 75 might be closed down.

Mr. Mancini said that this traffic study did not take that into account as the DOT would NOT accept it that way. He noted that in reference to Mr. Peck's question that the information presented in the traffic study is at 2012 full build out projected traffic and that the measure is of peak time hour Friday afternoon and for Saturday mid-afternoon.

Mr. Bulmer said that we normally call for the parking areas to be 10' x 20' and that they had them cited a bit smaller at 9' x 18'.

Mr. Sweeney said that 9' x 18' is design size in many communities and works in trying to conserve impervious area. They used urban land use standards and they are actually providing more than enough residential spaces.

Mr. Bulmer asked if the area that lets out on Route 1 is near the school and the buses.

Mr. Mancini said no, it is across from the vacant land that the Town owns.

Mr. Nickerson asked if there would be any issue of eminent domain here.

Attorney Harris said no.

Mr. Nickerson asked if the issue of the facades on the four exposed sides of buildings is in the regulations.

Mr. Wang said that point #3 of Architectural Styles states that there are appropriate levels for front and back sides.

Mr. Sweeney added that point #4 states that there would be no blank walls.

Mr. Nickerson said that he does not find the Stop & Shop design that is in the book to be acceptable.

Mr. Mulholland noted that it reads representative examples of . . .

Mr. Sweeney said that the intention is that some aspects of a lot of these samples may come together. While they are representative samples only – it does not relieve them from the obligation to meet the architectural standards. He said that they would have no objection to striking that line.

Mr. Nickerson said that he does have a problem with the drive-thrus even though he knows that they have only defined two areas for them.

Mr. Sweeney said that where there is a concern that they felt it prudent to leave it in only in the event that someone does come and propose some unique, flexible idea on it – and – at the end of the day, the Commission can still say no.

Mr. Mulholland added that it does state that it is subject to the approval of the Commission.

Mr. Sweeney agreed that the discretion is left with the Commission.

Mr. Nickerson noted the buffer/screening of the off-ramps/highways and said that while he knows they need exposure, was it necessary to see the parking lots.

Mr. Sweeney said that there is a significant grade difference between the highway area and their property and they have preserved a lot of areas and some are wetlands. There is a narrow window on visibility there.

Mr. Mancini said that DOT approval required information and environmental review with the Army Corps of Engineers. In the very large infield area and the bank, the DOT requires the adding of landscaping for a headlight buffer so there is the opportunity for plantings. There is also a good greenbelt in that area.

Mr. Nickerson asked where the 50' high proposed highway sign was to be installed.

Mr. Sweeney said that it has to be adjacent to I-95 and that they do not have a standard on exactly where. They are dealing with topography issues and do feel that they need to get the 50'. The Flanders Road signs are only 15'.

Mr. Salerno asked if they are proposing to connect and pave East Society Road.

Attorney Harris said that they are committed to the items that they have cited on the plan.

Mr. Salerno said that under Materials & Colors that he is not comfortable with vinyl siding in a commercial development and that he would propose to strike that out.

Mr. Fisher said that vinyl siding comes in a wide variety of shapes and sizes that do not even look like vinyl and that it is long-lasting and durable.

Mr. Salerno said that it is listed in both places and that he would be okay with it for residential but not for the commercial buildings.

Mr. Sweeney said that he understands where he is coming from however they make some very high grade vinyl and it might be useful in some of the smaller stores in certain instances.

Mr. Mulholland noted that there are some good vinyl products out there and that they might want to keep their options open.

Mr. Wang agreed and added that it is also appropriate to use in certain areas.

Mr. Salerno asked about the 50' height for the residential apartments.

Mr. Sweeney said that due to the topographic details that some of them would be built into the hillside and would not appear to look like 50' in height.

Mr. Wang noted that the end result of a lower height may be larger footprints and less green area.

Mr. Sweeney said that the apartment style buildings are four stories and that they need the 50' to have the peaked roof and that it is a critical issue to this project. He added that if they measure any four-story building that it is pretty high – well over 40'.

Mr. Mulholland noted that they are in 200 acres and that they might want to allow the flexibility.

Mr. Salerno said that he does not want to see them from the highway.

Mr. Sweeney said that they are in the lowest area of the land.

Mr. Wang noted that in the interest of smart growth that they want to have these units around the green.

Mr. Fisher said that there are no more than four livable stories.

Mr. Sweeney said that the overflow parking was taken out as they said that they did not want it and the neighbors said that they did not want the soccer field so that also came out.

Mr. Salerno said that he does not want stamped sidewalks and that he still wants to see variety in pavers.

Mr. Sweeney said that he agrees that they want variety however he does not want to restrict this as they have not reached that level of detail here and they want to keep this flexible so that they can integrate things. Attorney Harris explained that this would appear at the site plan stage.

Ms. Carabelas asked if they considered going green with some of these environmentally.

Mr. Wang said that he is a lead process professional and involved with measures that include the rating of the energy conservation of buildings and that they would contemplate this once they are in the building design process.

Mr. Gada asked if they would see the traffic and exactly where the cemetery is in relation to this. John Mancini pointed out the cemetery and Church Lane.

Mr. Gada asked if they were the people responsible for building Mashpee.

Mr. Fisher said no.

Mr. Wang said that Arrowstreet is working on the Sharon project.

Mr. Nickerson called for anyone from the public who wished to speak for, against or neutrally regarding this application –

Bob Gadbois, 358 Boston Post Road said that he would like the Commission not to close this Public Hearing tonight as this is not their regular meeting night and people go away on the weekend and cannot make it here. He said that he also finds it hard to believe that there would only be 43 kinds with 200 units of housing; especially since there are 83 kids coming from Sea Spray per the superintendents' figures. He also thinks

that traffic is an issue and that there are always problems on I-95. Recently he could not get out onto Boston Post Road when he went to the convenience store there.

Mr. Nickerson said that he has written correspondence from Mrs. Gadbois of 358 Boston Post Road noting Minutes dated 7/12/07 in which Mr. Peck made comments regarding the need for an economic impact study on the businesses in the area and a crime study. She also asked if three or more of the Commissioners had attended any of the neighborhood or business meetings that the developer had held and if so, where were the minutes of those meetings.

Mr. Nickerson said for the record that they did have an independent study done on the economic impacts of the downtown and Flanders area businesses (Don Klepper Smith) and a study on the effects on crime and Town services as well as the net tax advantage to the Town from this project. He asked for a show of hands from the Commissioners who had attended the neighborhood and other meetings. There were none.

Mr. Nickerson asked if the Commissioners had any other questions – Hearing none – he asked the applicant if they would like to comment.

Mr. Sweeney thanked them, said that he would review the criteria briefly and asked that the Public Hearing be closed this evening as this project was found to be consistent with the POCD, fixing the road infrastructure will be a benefit to the Town and the Gateway project will be an asset to the Town. He also submitted a summary of the Data Core study on the net tax dollars of over \$2M per year that would be realized. He added that those tax dollars come early in the development with the retail stores. There will be no changes to the aquifer protection regulations and the uses are provided for within the regulations. This is a mixed use development and they have millions of dollars in infrastructure costs that will be paid for by private funds. They have a unified planned development for a parcel that has sat vacant for many years and this is a signature project that they are all proud of and have been working on for over two years now.

Attorney Harris said that this has been a long process and that he truly believes that this difficult site was meant for these developers who are anxious to move forward. He said that he would urge the Commission to approve this application and move this project forward as they are under some stringent time frames on this.

Mr. Fisher expressed his gratitude to the Commission, the public, and the neighbors particularly for their thoughtfulness and effort on this project. He thanked staff for their many hours spent reviewing this project.

Mr. Nickerson noted that **Exhibit 11** submitted for the record is the Traffic Study by BL Companies dated June 2008 and **Exhibit 12** submitted for the record is the DataCore Partners LLC Economic Impact Study Summary dated 1/14/08.

Hearing no further comments –

Mr. Nickerson called for a motion to close this Public Hearing.

****MOTION (1)**

Mr. Gada moved that this Public Hearing be closed.

Mr. Salerno seconded the motion.

VOTE: 6 – 0 - 0. Motion passed.

Mr. Nickerson closed this Public Hearing at 10:30 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

Tab 9

**EAST LYME ZONING COMMISSION
SPECIAL MEETING
Thursday, JULY 31st, 2008
MINUTES**

The East Lyme Zoning Commission held a Special Meeting on Thursday July 31, 2008 at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Norm Peck,
Marc Salerno, Ed Gada, Steve Carpenteri

ALSO PRESENT: Attorney Theodore Harris, Representing the Applicant
Jay Fisher, SK Properties
Chris Knisley, KGI Properties
John Mancini, BL Companies
Bill Sweeney, TCORS
Bob Bulmer, Alternate
Gregory Massad, Alternate

ABSENT: William Dwyer, Alternate

Chairman Nickerson called this Special Meeting of the East Lyme Zoning Commission to order at 7:32 PM.

Pledge of Allegiance

The Pledge was observed.

Public Delegations

Mr. Nickerson called for any comments from the public regarding matters not on the agenda.

Mark Butterfield, 6 Upper Walnut Hill Road said that he wanted to speak regarding the Walnut Hill Country Club –

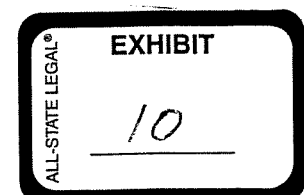
Attorney Theodore Harris objected and said that it is not appropriate to discuss a pending application that is to come before them.

Mr. Nickerson said to Mr. Butterfield that what Attorney Harris said was correct in that they cannot take public comment on pending applications.

Special Meeting

1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for approval of a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7.

Mr. Nickerson noted that some of them may have been instructed that this was a public hearing in which they would be able to speak. He apologized that they may have been so misinformed and said that both of the



applications under discussion this evening are for Commission discussion and decision only as public testimony has already been taken.

Mr. Nickerson then called for discussion from the Commissioners on the Application of Theodore Harris for Gateway Development/East Lyme LLC noting that they had heard considerable testimony the previous week as well as in many workshops.

Ms. Carabelas said that she would like to address the issue of the height of the apartments that would be built. She said that she is uncomfortable with the height even though she knows that they meet the regulations to the roof line.

Mr. Gada said that he has a problem with the in and out roadway discussion from the last meeting where they come out somewhere near the Fire department and the cemetery.

Mr. Nickerson asked that they stay with one item at a time and said that they do have other buildings in Town that are that high/tall – such as Windward Apartments, Sea Spray and he has heard that Hope Street is even taller at 52' whereas these are only 50'. He said that he does not have a problem with the height as the buildings are being put in an area where the elevation is lower and they will not stick out. Also, they are lowering the number of residential units from 400 to 275 and by doing that, this can create more open space area and larger buffer zones rather than more buildings and impervious area.

Ms. Carabelas said that she does know that the neighbors are much happier with the number and type of units going there.

Mr. Salerno said that he has tossed that question around and asked himself if he would want taller buildings in the lower topographical area or more buildings spread out over more area.

Mr. Peck said that he does not have a problem with the height and that when it gets to the site plan approval stage that he wants to see the buildings in the lower area.

Mr. Nickerson asked Mr. Gada about his concern regarding the exit to Route 1.

Mr. Gada asked if it was pointed out that it is across from the entrance to the High School.

Mr. Salerno said that it is not there, it is across from the empty lot next to the pizza place.

Mr. Nickerson said that the exit comes out on the other side of the fire house and that the big plan is to move the High School entrance and make it a four-way intersection with a light and turning lanes to make the entire area safer.

Mr. Salerno said that makes sense and that they would have more say at the site plan stage.

Mr. Nickerson said that they do not have any say on a State Road anyway as the State will make that decision and the applicant has volunteered to widen the road and put in the turning lanes. Also, regarding the land on the sides, some of it belongs to the DOT as a right of way anyways – such as the area in front of where the new CVS will be in the Flanders Plaza.

Mr. Gada noted that he was satisfied at this point.

Mr. Salerno said that in looking over the materials that if they were proposing changes that he does not want to see vinyl sided commercial buildings and suggested that they add that the use of vinyl siding shall be limited as it would give them some flexibility without tying their hands. He would also like the grade of the vinyl siding to be subject to Commission approval. Regarding masonry he said that he also does not want to see a complete masonry building.

Mr. Peck suggested that they add a line under Item #1 as letter 'e' that states that these items may be limited or adjusted by the Zoning Commission. He said that he thinks that they already have this ability but he would suggest they add it as that would take care of the trim and siding etc.

Mr. Carpenteri noted that it would give them a say on the grade of the siding, etc. however he suggested that they should remain open to the use of siding as they make high grade products that do not even look like siding.

Mr. Salerno agreed that adding the statement as 'e' would work.

Mr. Peck said that he was concerned with the section of road south of I-95 to King Arthur Drive as they currently have around 25,000 cars per day passing through and the area is not surpassed except by Groton. On a peak Saturday they currently have 21,900 cars passing through and they project 28,010 after the project is done which by his calculations is a 28% increase. However, he said that he does not think that this includes the Rte. 1 mitigation/access plan or the light near the Shack and that mitigation plan.

Mr. Salerno said that the report shows the level of service.

Mr. Peck said yes, it does and that it is rated acceptable.

Mr. Nickerson asked what the level of service was in terms of present and going to –

Mr. Salerno said that the frontage road level at peak hours goes from B to C; the redone exit ramps for I-95 south stay at level A on Friday peak hour and goes from a level A to B on Saturday peak hour. The I-95 North goes from a level B to a level C during the peak times.

Mr. Nickerson said that the applicant is volunteering to do these improvements at their own cost and that they involve State roads.

Ms. Carabelas said that the State has to approve this anyway.

Mr. Peck said that he is also concerned with the setbacks on Page 3 and the buffers on Page 6 and that he has a specific situation in mind here with respect to the cemetery. The 6' and 10' with respect to the cemetery make it so that they can be right next to it. He said that he would like to see a larger buffer or setback in that area and the possibility of adding more trees so that people visiting the cemetery are not looking out on buildings.

Mr. Salerno noted that it is site plan specific.

Mr. Peck said that this was an after thought of his from one of the workshops as the cemetery is in a commercial zone.

Mr. Salerno said that it has to be a 10' buffer and that could be two rows of pine trees wide placed so that you could not see through them.

Mr. Peck said that his thoughts were that they could increase the setback or the buffer and double the evergreens for the winter landscape. He suggested that after Item #3 on Page 3 that they might add: 'Unless otherwise approved or required by the Zoning Commission.'

Mr. Nickerson said that they have a staff of architects and that they should know how to do this and to come in with a good plan for this.

Mr. Peck suggested that they change it to 100'.

Mr. Salerno, Mr. Nickerson and Mr. Carpenteri said that they would not be in favor of that.

Mr. Carpenteri suggested that on Page 6 that they change the buffer from 10' to 20' and that the Zoning Commission may choose to make it a landscape buffer.

Mr. Peck suggested that it be 20' unless otherwise approved by the Commission.

Mr. Peck said that on Page 7 in Item #8 on Irrigation that it states that it should not be supplied by the public water system without prior approval of the Water & Sewer Commission.

Mr. Salerno suggested that they add that they can use 'gray' water

Mr. Peck noted that the next item number under 8 should be changed to number 9 as there are two 8's.

Mr. Salerno asked that they remove the word 'acceptable' where it appears and relates to 'representative samples'. He cited pages 5, 6, 8, 11, 15, 19 and 23 and noted that any other pages where it might appear should also be included.

Mr. Peck asked that about Item #4 on Page 14 regarding the sale of alcoholic beverages not being subject to any Town separation requirements.

Mr. Carpenteri said that the State follows the Town on these requirements and that historically liquor establishments have to be so many feet from each other.

Ms. Carabelas said that they are talking about ONLY within this development here.

Mr. Salerno said that he did not think that it should be different from the Town.

Mr. Peck said that he did not want to give unfair advantage to this.

Mr. Nickerson said that the point of putting it in here is that they are building a mini-Town and that this is the only area that it would apply to.

The Commission decided that they would strike Item #4 under Miscellaneous Provisions and move all the following numbers up.

Mr. Nickerson said that he would address the drive-thrus at a later time when and where they were being proposed. He noted that he would like the Commission to take control of primary and secondary free-standing signs and asked that on Page 10 in Item #2 b that the last line be changed to read: . . . 'adjacent to each access to a State highway or State road.'

Mr. Nickerson asked if they were ready to make a motion.

****MOTION (1)**

Mr. Salerno moved to APPROVE the Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7; with the following modifications: Remove the word 'acceptable' where it appears and relates to 'representative samples' (pgs. 5, 6, 8, 11, 15, 19 & 23); Page 6, Item 2b change the buffer from 10' to 20' and add 'unless otherwise approved by the Zoning Commission'; Page 14 – Strike Item #4 and renumber accordingly; Page 10 on signage, Item 2b change the very last line at the end to read: 'state highway or state road'; Page 21 – Add a line that states: 'All materials may be limited or adjusted by the Zoning Commission' and regarding irrigation water – 'acceptable 'gray' water may be used'.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 - 0. Motion passed.

(Note: Copy of MDP Standards showing above changes is filed with the Town Clerk)

It was noted that this would publish on 8/7/08 and become effective on 8/8/08.

2. Application of Frances and Robert Mattison for a Special Permit under Section 3.2.3 to operate a dog kennel at property identified in the Application as 98 Grassy Hill Road, East Lyme, CT.

Mr. Nickerson called for discussion on this application.

Mr. Salerno said that he took a look at the acoustical report/study and that while studying electrical engineering, he studied acoustics and that he now does underwater acoustics. He looked at the report and while the math is 'dead on' and correct some of the assumptions are incorrect. 'Shadowing', the absorption of trees which was mentioned – he said that he was not sure how much sound is absorbed but there are not a lot of trees in certain areas there. The study was done for 300' from the closest property and the attenuation distances were based on grade. He said that he was not sure if that was totally correct and that the fence material would have to be heavy and vinyl would not be able to achieve this and for the study to be accurate – they would have to have a concrete block. Considering this, he said that he does think that the noise would be a nuisance. Also, the regulations state a 'kennel' and he said that doggie daycare is not a kennel as it would mean more vehicle trips per day for people dropping off and picking up rather than with a kennel where people would be leaving their pets for a week or two. He said that he could to approve this with the doggie daycare and that he thinks that based on the acoustic report that there would be a problem up there with the kennel.

Mr. Carpenteri said that this is a large property and that there could be another area on it where the kennel could go so that it is farther from the neighbors so that the noise would be less of a problem to them.

Mr. Gada said that he has trouble with the doggie daycare and all of the traffic that would be generated by it and that he agrees with what his fellow Commissioners have said.

Mr. Peck said that he finds it difficult in trying to support someone who wants to do business in Town when they have to consider a number of things so that they have orderly development. He said that he drove up to this area and that he can hear the birds and it is very quiet and that this would upset this quiet corner. He

said that he also considered that there are people who ride horses up there and that horses are 'strange' animals and could be spooked by dogs barking and someone could get hurt. He said that the opposition from the neighbors was one of the strongest that he has seen and that is what drove him to go up to check out the area. He said that he does not think that this fits in with the harmony of the neighborhood.

Ms. Carabelas said that she did the same thing that Norm did and went up to check out the area and that she had to agree with what her fellow Commissioners have already said.

Mr. Salerno said that he also drove up there and that he was also concerned with the sharp curve in the road.

Mr. Nickerson asked if they were ready to make a motion on this application.

****MOTION (2)**

Ms. Carabelas moved to DENY the Application of Frances and Robert Mattison for a Special Permit under Section 3.2.3 to operate a dog kennel at property identified in the Application as 98 Grassy Hill Road, East Lyme, CT.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

It was noted that this would publish on 8/7/08 and become effective on 8/8/08.

Adjournment

Mr. Nickerson called for a motion to adjourn.

****MOTION (3)**

Mr. Salerno moved to adjourn this Special Meeting of the East Lyme Zoning Commission at 9:35 PM.

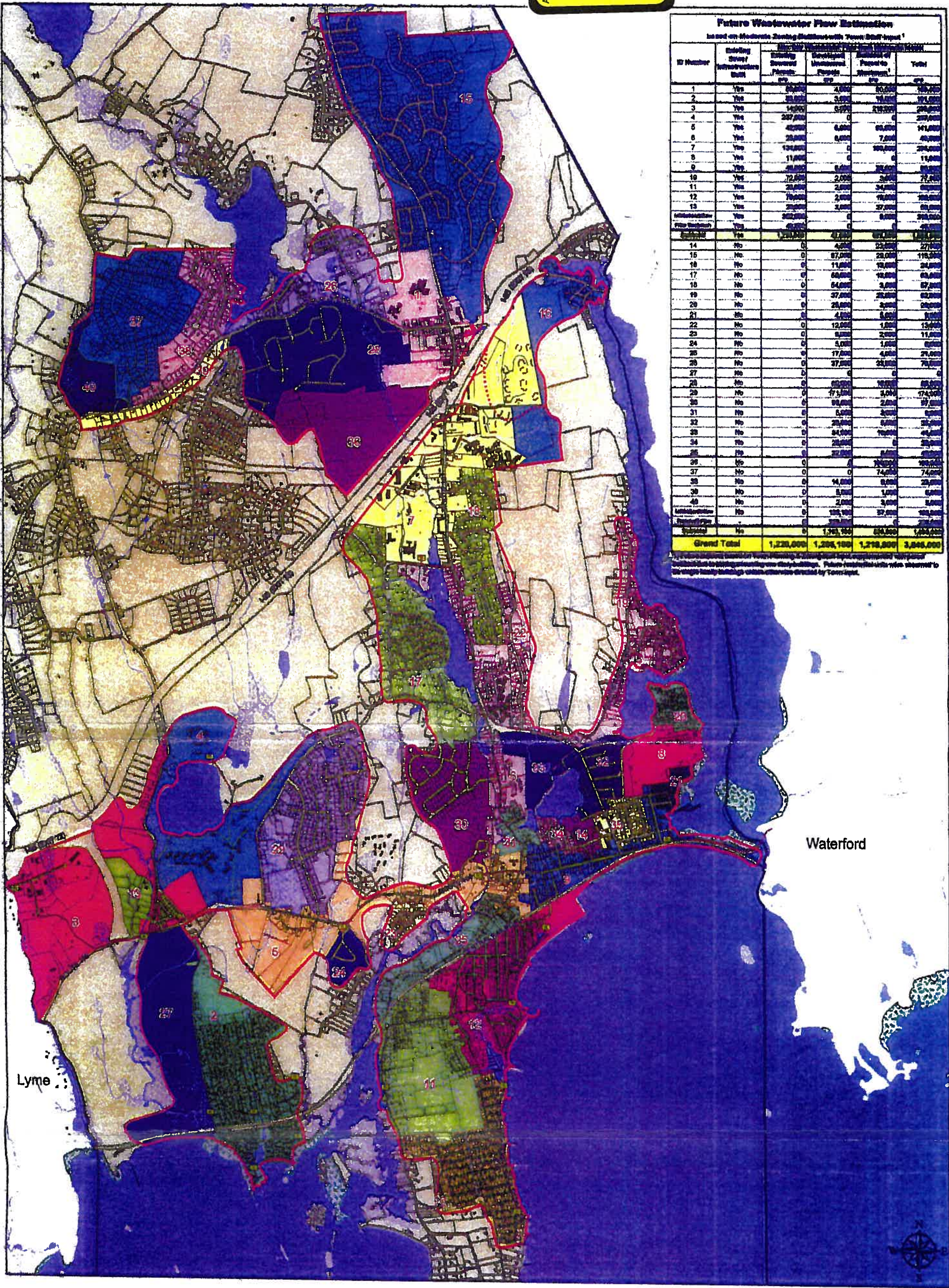
Mr. Carpenteri seconded the motion.

VOTE: 6 – 0 - 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

Tab 10



Future Wastewater Flow Estimation					
Based on Moderate Zoning Buildout with Town Staff Input					
ID Number	Existing Sewer Infrastructure Built	Estimated Wastewater Flow (gpd)			
		Existing Sewer	Developed Unsewered	Population	Total
1	Yes	25,000	2,000	50,000	100,000
2	Yes	25,000	2,000	50,000	100,000
3	Yes	15,000	0	25,000	50,000
4	Yes	25,000	0	50,000	100,000
5	Yes	40,000	0	80,000	160,000
6	Yes	25,000	0	50,000	100,000
7	Yes	15,000	0	30,000	60,000
8	Yes	11,000	0	22,000	44,000
9	Yes	25,000	0	50,000	100,000
10	Yes	72,000	2,000	144,000	288,000
11	Yes	25,000	2,000	50,000	100,000
12	Yes	70,000	2,000	140,000	280,000
13	Yes	25,000	2,000	50,000	100,000
14	Yes	25,000	0	50,000	100,000
15	No	0	0	0	0
16	No	0	0	0	0
17	No	0	0	0	0
18	No	0	0	0	0
19	No	0	0	0	0
20	No	0	0	0	0
21	No	0	0	0	0
22	No	0	0	0	0
23	No	0	0	0	0
24	No	0	0	0	0
25	No	0	0	0	0
26	No	0	0	0	0
27	No	0	0	0	0
28	No	0	0	0	0
29	No	0	0	0	0
30	No	0	0	0	0
31	No	0	0	0	0
32	No	0	0	0	0
33	No	0	0	0	0
34	No	0	0	0	0
35	No	0	0	0	0
36	No	0	0	0	0
37	No	0	0	0	0
38	No	0	0	0	0
39	No	0	0	0	0
40	No	0	0	0	0
Unsewered	No	0	0	0	0
Grand Total		1,220,000	1,200,000	1,210,000	2,430,000

Parcel

Buildings

Town Boundary

Water

Marsh

Salt Water Flat

Existing Sewer Service District

Existing Sewer Avoidance Area

Existing Sewer Infrastructure

Gravity Main

Force Main

Pump Station

1) Water features and town boundary imported from the 2004 CT DEP GIS CD-ROM data.

2) 2004 parcel, building, and building data imported from the Town of East Lyme.

3) Flow estimation based on water usage for the parcels with public water. Lots with public water were assigned flow based on the town's average water consumption rate. Lots without public water were assigned flow based on the town's average water consumption rate.

4) Unsewered lots built out using 2004 zoning regulations and lot area provided by the Town of East Lyme. Additional information to provide development or wetland data when from 1998 USDA Soil Survey Map.

5) Unsewered and unsewered lots built out using 2004 zoning regulations and lot area provided by the Town of East Lyme. Additional information to provide development or wetland data when from 1998 USDA Soil Survey Map.

6) Unsewered lots built out using 2004 zoning regulations and lot area provided by the Town of East Lyme. Additional information to provide development or wetland data when from 1998 USDA Soil Survey Map.

7) Unsewered lots built out using 2004 zoning regulations and lot area provided by the Town of East Lyme. Additional information to provide development or wetland data when from 1998 USDA Soil Survey Map.

WASTEWATER FLOW ESTIMATION
BASED ON MODERATE ZONING
BUILDOUT WITH TOWN STAFF INPUT
East Lyme Sewer Capacity Analysis
FEBRUARY 2005

0 1,000 Feet

FUSS & O'NEILL INC. Consulting Engineers
145 HARTFORD ROAD, MANCHESTER, CONNECTICUT 06040
(860) 648-2469

Figure V-15

FV 7 W/O OLT 10/1/1 10/1/1

Tab 11

Gateway Residential
East Lyme, Connecticut
26-Dec-12
Flow Demand Worksheet

PHASE 1:

SEWER:

Residential Units Flow

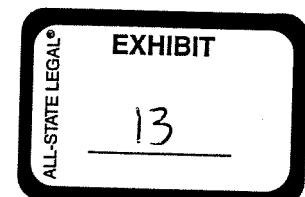
	Flow (Gallons Bedrooms Per Day-gpd)*
96 1 bedroom units	96 14,400
179 2 bedroom units	358 53,700
275 Total Units	454 68,100

Clubhouse Flow	6930 square feet (sf)	Flow (gpd)*
	200 sf/person	347
	10 gpd/person	

Total Anticipated Sewer Demand (gpd) 68,447

WATER:

Total Anticipated Water Demand (gpd) (assumed to be 110% of sewer demand) 75,291



Tab 12

STEVENS, HARRIS, GUERNSEY & QUILLIAM, P.C.

ATTORNEYS AND COUNSELORS AT LAW

351 MAIN STREET

P. O. DRAWER 660

Niantic, CONNECTICUT 06357

**RONALD F. STEVENS
THEODORE A. HARRIS
PAUL M. GUERNSEY
PAIGE STEVENS QUILLIAM
MEGAN C. FLAHERTY**

**TEL (860) 739-6906
FAX (860) 739-2987
E-MAIL shg-realestate@snet.net**

FILED

February 21, 2013

Paul Formica, Chairman
East Lyme Water & Sewer Commission
118 Pennsylvania Avenue
Niantic, CT 06357

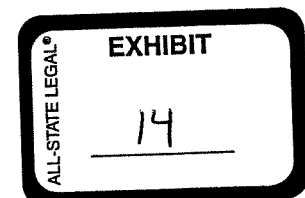
Re: Gateway Development East Lyme, LLC (GDEL, LLC)/ Master Development Plan for GPDD
Request for Service

Dear Mr. Formica:

I am writing on behalf of Gateway Development East Lyme LLC in regard to the development of the Gateway Plan Development District located on the west side of Flanders Road just north of its intersection with I-95. This district was created in 2001 and as noted this Commission in its comments to the Zoning Commission at that time, this area "has always been considered for future inclusion in the sewer shed so as to protect the aquifer zone". In fact, this area is currently in the sewer shed.

In 2008, the East Lyme Zoning Commission approved a Master Development Plan submitted by GDEL, LLC for substantially the entire district. This plan was a conceptual site plan which provided for residential and commercial uses, all of which were located in the sewer shed for the Town of East Lyme, and as such, the development plan was premised on the availability of public water and sewer. At that time, the Applicant consulted with staff for the Water and Sewer Commission and provided estimates as to water and sewer consumption over an anticipated development schedule; this schedule was also submitted to the East Lyme Zoning Commission.

The implementation of the Master Development Plan for the district as approved by the Zoning Commission merely requires the submittal of a final site plan which substantially conforms to the original approved development plan along with the building permit application, in order to initiate final construction. While it had been anticipated the construction would begin in 2009, the upheavals in the economy and financial markets made initiation of this development impossible at that time.



DRAFT

The land subject to this plan represents several parcels located off Flanders Road, two of which have frontage on Flanders Road, and one of which currently has a sewer assessment. As noted, all of the development is contained within the sewer shed area, as shown on the East Lyme Sewer Shed map. (see attached copy)

At this time, the Applicant has initiated the procedures for final site plan approval for a portion of its phased development. This initial portion represents residential use with an anticipated sewer demand of 68,447 gallons per day, and is consistent with that originally approved by the East Lyme Zoning Commission in 2008. As such, I have attached with this letter a request for service with respect to this first phase. In addition, I have attached our current estimates of future needs as the balance of the development proceeds.

As such, the purpose of this letter is to request services for the first phase, and to advise the Commission of its anticipated future water and sewer needs, moving forward with this development.

Would you kindly put this matter on the Commission's agenda at your earliest convenience.

Yours very truly,

Theodore A. Harris

TAH:jpl

Tab 13

Town of

Office of Water & Sewer Commission
Tel: 860-739-6931 • Fax: 860-739-6930



East Lyme

Post Office Box 519
Niantic, Connecticut 06357

March 27, 2013

Gateway Development/East Lyme LLC
342 North Main Street
Suite 200
West Hartford, CT 06117

Re: Supplemental Sewer Assessment – Flanders Road

Dear Sir/Madam:

Enclosed please find a copy of the Public Hearing Notice regarding the proposed sewer assessment on your property. This Notice will be published in The Day on Thursday, March 28, 2013.

The proposed sewer assessment is \$202,381.02 and can be paid in 15 annual installments at the rate of 5.0% on the unpaid balance.

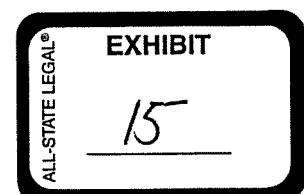
A copy of the proposed benefit assessment resolution is available for inspection at the East Lyme Town Clerk's Office.

Sincerely,

Bradford C. Kargl
Municipal Utility Engineer

Enclosure (1)

Cc: Attorney T. Harris



Town of

Office of Water & Sewer Commission
Tel: 860-739-6931 • Fax: 860-739-6930



East Lyme

Post Office Box 519
Niantic, Connecticut 06357

March 27, 2013

Gateway Development/East Lyme LLC
342 North Main Street
Suite 200
West Hartford, CT 06117

Re: Supplemental Sewer Assessment – 286 Flanders Road

Dear Sir/Madam:

Enclosed please find a copy of the Public Hearing Notice regarding the proposed sewer assessment on your property. This Notice will be published in The Day on Thursday, March 28, 2013.

The proposed sewer assessment is \$260,351.91 and can be paid in 15 annual installments at the rate of 5.0% on the unpaid balance.

A copy of the proposed benefit assessment resolution is available for inspection at the East Lyme Town Clerk's Office.

Sincerely,

Bradford C. Kargl
Municipal Utility Engineer

Enclosure (1)

Cc: Attorney T. Harris

Town of

Office of Water & Sewer Commission
Tel: 860-739-6931 • Fax: 860-739-6930



East Lyme

Post Office Box 519
Niantic, Connecticut 06357

March 27, 2013

Gateway Development Commons Assoc., LLC
C/o Commercial Corporation
342 North Main Street
Suite 200
West Hartford, CT 06117

Re: Supplemental Sewer Assessment – Ancient Highway

Dear Sir/Madam:

Enclosed please find a copy of the Public Hearing Notice regarding the proposed sewer assessment on your property. This Notice will be published in The Day on Thursday, March 28, 2013.

The proposed sewer assessment is \$63,289.55 and can be paid in 15 annual installments at the rate of 5.0% on the unpaid balance.

A copy of the proposed benefit assessment resolution is available for inspection at the East Lyme Town Clerk's Office.

Sincerely,

Bradford C. Kargl
Municipal Utility Engineer

Enclosure (1)

Cc: Attorney T. Harris

**TOWN OF EAST LYME
WATER AND SEWER COMMISSION
NOTICE OF PUBLIC HEARING**

Notice is hereby given that the East Lyme Water and Sewer Commission, acting as the Town of East Lyme's duly designated Water Pollution Control Authority, will hold a public hearing on April 9, 2013 at 6:00 p.m. at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut to hear comments regarding a proposed benefit assessment resolution to be levied on the following properties benefited by the East Lyme Sanitary Sewer System:

<u>OWNER</u>	<u>ADDRESS</u>	<u>MAP/LOT</u>	<u>ASSESSMENT</u>
Fabi Vincent J. Jr.	36 S. Beechwood Rd	7.18/68.1	\$ 7,838.89
Evan & Ann Carpenter	50 Terrace Avenue	8.1/128.1	\$ 7,838.89
Bonelli/Nebelung	5A & 5B Attawan Rd	8.3/8.2	\$ 11,758.34
Gateway Development/ East Lyme LLC	Flanders Road	31.0/1	\$202,381.02
Gateway Development/ East Lyme LLC	286 Flanders Road	26.0/2	\$260,351.91
Gateway Commons Assoc., LLC	Ancient Highway	25.0/35	\$ 63,289.55

The public is invited to attend and be heard regarding the proposed benefit assessment resolution. A copy of the proposed assessment resolution has been filed with the town clerk and is available for inspection by the public.

TOWN OF EAST LYME
WATER AND SEWER COMMISSION

By: _____
Paul M. Formica,
Its Chairman

**SUPPLEMENTAL SEWER
ASSESSMENT RESOLUTION**

RESOLUTION relative to a supplemental assessment of benefits pursuant to the resolution adopted by the East Lyme Water and Sewer Commission on August 27, 1991, as amended on March 24, 1992 (hereinafter the "**Resolution**"), in connection with various properties located in the Town of East Lyme, Connecticut, establishing the due date of said assessments, providing for installment payments of assessments and interest thereon:

WHEREAS, the East Lyme Water and Sewer Commission, the statutory municipal Water Pollution Control Authority existing under the laws of the State of Connecticut within and for the Town of East Lyme, has heretofore adopted a Resolution relative to the assessment of benefits for public sanitary collection sewers installed in the Town of East Lyme; and

WHEREAS, said Resolution provides that structures constructed or expanded after the adoption of the Resolution are to be assessed in accordance with the terms of said Resolution; and

WHEREAS, certain of the properties hereinafter specified contain structures which were constructed or expanded after the adoption of the Resolution, and all properties hereinafter specified are benefitted by the sanitary sewer system; and

WHEREAS, certain of the properties hereinafter specified should have been included in the Resolution, but due to inadvertence, were not; and

WHEREAS, it is the intention to levy supplemental assessments upon said properties in accordance with Section 7-249 of the Connecticut General Statutes and the Resolution.

NOW THEREFORE, BE IT RESOLVED by the East Lyme Water and Sewer Commission as follows:

1. The owners, properties and the amounts of the assessments hereby levied upon said properties are as follows:

<u>OWNER</u>	<u>ADDRESS</u>	<u>MAP/LOT</u>	<u>ASSESSMENT</u>
Fabi Vincent J. Jr.	36 S. Beechwood Rd	7.18/68.1	\$ 7,838.89
Evan & Ann Carpenter	50 Terrace Avenue	8.1/128.1	\$ 7,838.89
Bonelli/Nebelung	5A & 5B Attawan Rd.	8.3/8.2	\$ 11,758.34
Gateway Development/ East Lyme LLC	Flanders Road	31.0/1	\$202,381.02
Gateway Development/ East Lyme LLC	286 Flanders Road	26.0/2	\$260,351.91
Gateway Commons Assoc., LLC	Ancient Highway	25.0/35	\$ 63,289.55

2. That the assessments set forth in Paragraph 1 hereof shall be due and payable on **May 1, 2013**. The owner(s) of any assessed property may elect to pay the entire amount of the assessment in full on or before the date that it is due and payable without interest, or may elect to pay said assessment by installment payments made in accordance with paragraph 3 hereof.

3. If the election is made to pay said assessment by installment payments, installment payments of the assessment for each property shall be made in substantially equal annual installments, the first installment to be due and payable **May 1, 2013**, and each subsequent payment of an installment to be due and payable on or before March 1st of each year, and the final payment shall be due and payable no later than **May 1, 2027**. Payments shall be made payable to the order of the Treasurer of the Town of East Lyme. Notice of installment payments will be recorded on the East Lyme land records as provided by the Connecticut General Statutes.

Notwithstanding any other provision herein, if any portion of any installment, including accrued interest, has not been paid by the first anniversary date after such installment was due and payable, then the entire principal sum of the assessment, together with all accrued interest, shall become due and payable.

4. That interest at the rate of **five percent (5%)** per annum on the unpaid balance of the assessment shall be due and payable at the time of the payment of each installment provided for in paragraph 3 above. Any person may pay an installment or installments for which he is liable at any time prior to the due date thereof.

5. That the assessment or any installment thereof, if not paid within thirty (30) days after the due date, shall be delinquent and shall be subject to interest from such due date at the rate and in the manner set forth in the Connecticut General Statutes for delinquent property taxes.

6. That each installment of interest shall be collectible as part of such assessment.

7. That any delinquent assessment or delinquent installment of any assessment and any interest due thereon shall constitute a lien against the real estate against which the assessment was levied from the date such levy became due. Each such lien may be continued, recorded and released in the manner provided by the Connecticut General Statutes for continuing, recording, and releasing real property tax liens. Each such lien shall take precedence over all other liens and encumbrances except taxes and may be foreclosed in same manner as real property taxes.

8. That these supplemental assessments are in addition to sewer benefit assessments previously levied against these properties.

BE IT FURTHER RESOLVED, that the assessments of benefits stated herein and in the public record of the Water and Sewer Commission of the Town of East Lyme should be deemed duly and legally made. Notice shall be published listing the proposed properties against which benefits have been assessed, with the amount to be paid by the Owner(s) and a notice of the date when assessments become due and payable. A copy of the assessment of benefits shall be mailed to the Owner(s) of each property affected thereby in accordance with the Connecticut General Statutes.

EAST LYME WATER & SEWER COMMISSION
PUBLIC HEARING
Tuesday, APRIL 9th, 2013
MINUTES

FILED IN EAST LYME
CONNECTICUT

APR 11 2013 AT 11:55 AM PM
Bridget D. Dineen ATC
EAST LYME TOWN CLERK

The East Lyme Water & Sewer Commission held a Public Hearing on April 9, 2013 at Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut to hear comments regarding a proposed benefit assessment resolution to be levied on properties benefitted by the East Lyme Sanitary Sewer System. (Copy attached at the end of the minutes).

PRESENT: Paul Formica, Chairman, Dave Zoller, Dave Murphy, Steve DiGiovanna, Roger Spencer, Carol Russell, Dave Bond

ALSO PRESENT: Attorney Edward O'Connell, Town Counsel
Attorney Mark Zamarka, Town Counsel
Brad Kargl, Municipal Utility Engineer
William Scheer, Acting Public Works Director
Anna Johnson, Finance Director

ABSENT: Joe Mingo

Chairman Formica called this Public Hearing to order at 6 PM.

Pledge of Allegiance

The Pledge was observed.

Public Hearing

▪ **Proposed Supplemental Sewer Benefit Assessments**

Mr. Formica read the Notice of Public Hearing into the record noting that the legal ad had been published in the New London Day on March 28, 2013. He said that Attorney O'Connell was present and could explain that these are supplemental to previously passed sewer assessment resolutions.

Attorney O'Connell said that these properties relate to the supplemental sewer benefit resolution that passed in the 1990's and this list catches up on various lot splits or changes that have occurred since the resolution was passed. It also picks up anyone who may have been missed. The calculation and interest and payment period is in accordance with the original resolution.

Mr. Formica asked three times if there were any members of the public who wished to comment –
Hearing none –

He called for any comments from the Commissioners –

Hearing none – He called for a motion to close this Public Hearing.

****MOTION (1)**

Mr. DiGiovanna moved to close this Public Hearing.

Mr. Zoller seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

Mr. Formica closed this Public Hearing at 6:07 PM.

Respectfully submitted,

Karen Zmitruk,

Recording Secretary

**EAST LYME WATER & SEWER COMMISSION
SPECIAL MEETING
Tuesday, APRIL 9th, 2013
MINUTES**

The East Lyme Water & Sewer Commission held a Special Meeting on April 9, 2013 at Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut.

PRESENT: Paul Formica, Chairman, Dave Zoller, Dave Murphy, Steve DiGiovanna, Roger Spencer, Carol Russell, Dave Bond

ALSO PRESENT: Attorney Edward O'Connell, Town Counsel
Paul Malmrose, Tighe & Bond
George Kansas, Tighe & Bond Project Manager
Brad Kargl, Municipal Utility Engineer
William Scheer, Acting Public Works Director
Anna Johnson, Finance Director

FILED IN EAST LYME
CONNECTICUT
APR 11 2013 AT 11:55 AM
BRAD K. KARGL
EAST LYME TOWN CLERK

ABSENT: Joe Mingo

1. Call to Order

Chairman Formica called this Special Meeting to order at 6:08 PM immediately following the previously scheduled Public Hearing. The Pledge was previously observed.

2. Proposed Supplemental Sewer Benefit Assessments

Mr. Formica called for any comments or a motion regarding the supplemental sewer benefit assessments presented at the Public Hearing that they had just closed. (Attached)

****MOTION (1)**

Mr. DiGiovanna moved to adopt the Resolution regarding the Supplemental Sewer Benefit Assessments as proposed and presented.

Mr. Spencer seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

3. Tighe & Bond Recommendations Regarding Bids for Regional Interconnection Project

Mr. Formica noted that the bid opening on Wednesday, April 3, 2013 had gone very well. Paul Malmrose and George Kansas from Tighe & Bond are here this evening to explain the process and make the recommendations for the awarding of Contract 1, Contract 2 and Contract 3 of the East Lyme – New London Interconnection Project.

George Kansas, Tighe & Bond Project Manager said that they opened the bids on April 3, 2013 and have presented them in order of contract and in numerical order with the lowest first and working up to the highest bidder.

For **Contract 1** – the Water Transmission Main the lowest bidder was Haluch Water Contracting, Inc. from Ludlow, MA whose base bid was \$3,721,220.00, Bids ranged from there to a high of \$7,032,060.50. The opinion of probable construction cost that they had come up with was \$5,330,000.00 with Haluch coming in approximately 30% lower however based on a review of the individual line items the bid appears to be reasonable. He continued that they reviewed the project reference lists provided and contacted selected references by phone to verify their performance with respect to the quality of workmanship, work schedules on prior projects, submittal and change order processing, cooperation and

overall satisfaction. The overwhelming majority of reference checks were positive, stating that Haluch Water Contracting was a good pipeline contractor and that they would be willing to hire them for future water pipeline work. Based on this and upon a reference indicating good financial standing from United Bank, Tighe & Bond recommends that the Town of East Lyme award the contract for Contract No. 1 – Water Transmission Main of the East Lyme – New London Interconnection Project to Haluch Water Contracting.

Contract 2 – Water Storage Tank

Mr. Kansas said that there was only one bidder for this part of the Interconnection Project. The bid was from Mid-Atlantic Storage Systems, Inc. – Washington Court House, Ohio in the amount of \$1,383,780.00. The opinion of probable construction cost that they had come up with was \$1,620,000.00. This bid is approximately 15% lower than the Tighe & Bond opinion and is considered a reasonable difference. He explained that there are limited contractors who make this type of tank and that this contractor has met all of the requirements of the bid. The references contacted spoke favorably with one reference stating that Mid-Atlantic 'has constructed nine tanks in the past 10 years for his firm and that they are one of the two best contractors that he has ever worked with.' Their financial standing is also very sound. Based on all of this, Tighe & Bond recommends that the Town of East Lyme award the contract for Contract No. 2 – Water Storage Tank for the East Lyme – New London Interconnection Project to Mid-Atlantic Storage Systems, Inc.

Contract 3 – Water Pump Stations

Mr. Kansas said that there were three bidders for this part of the project with D'Amato Construction Co., Inc. of Bristol, CT coming in the lowest at \$1,964,656.00. The opinion of probable construction cost that they had come up with was \$2,310,000.00. The low bid is approximately 15% lower than the Tighe & Bond opinion which is considered a reasonable difference between a low bid and an engineer's opinion of probable construction cost. References were contacted and indicated that they would work with D'Amato again in the future if given the opportunity. United Bank was also contacted and they indicated that D'Amato is a good customer and is in good financial standing. Based upon these findings, Tighe & Bond recommends that the Town of East Lyme award the contract for Contract No. 3 – Water Pump Stations of the East Lyme – New London Interconnection Project to D'Amato Construction Co., Inc. Mr. Kansas said that he would be happy to answer any questions that they might have.

Mr. Zoller asked about Haluch noting that in a line by line comparison that there were some large disparities of figures in comparison to Tighe & Bond estimates.

Mr. Kansas explained that in some items they had to project the maximum and also that some numbers are fixed based on what will be paid.

Ms. Russell asked Mr. Kansas if he is comfortable with the difference in his estimate versus the actual bid.

Mr. Kansas said that he was and added that in spite of all of the discussion on a better economy that he is seeing that it still is not that great and this bid is in line as it represents steady work for, technically – any company.

Mr. Malmrose noted that Mr. Kansas also called the contractors and asked them again about the bid numbers they had submitted to make sure that they did not make any errors on them and that they can get the job done for the price that they indicated.

Mr. Kargl said that they would have to make motions to award the three contracts. He asked that they make three separate motions, one for each of the contracts.

****MOTION (2)**

Mr. Murphy moved to award Contract No. 1 (Water Transmission Main) of the East Lyme – New London Interconnection Project to Haluch Water Contracting, Inc. of Ludlow, MA as recommended by Tighe & Bond in their letter of April 9, 2013 and contingent upon the review and approval by the Connecticut Department of Public Health (DPH). Further resolved, to authorize the

Chair to execute a contract and related documents for such work upon submission of the required bonds and insurance certificates.

Mr. DiGiovanna seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

****MOTION (3)**

Mr. Zoller moved to award Contract No. 2 (Water Storage Tank) of the East Lyme – New London Interconnection Project to Mid-Atlantic Storage Systems, Inc. of Washington Court House, Ohio as recommended by Tighe & Bond in their letter of April 9, 2013 and contingent upon the review and approval by the Connecticut Department of Public Health (DPH). Further resolved, to authorize the Chair to execute a contract and related documents for such work upon submission of the required bonds and insurance certificates.

Mr. DiGiovanna seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

****MOTION (4)**

Mr. DiGiovanna moved to award Contract No. 3 (Water Pump Stations) of the East Lyme – New London Interconnection Project to D'Amato Construction Company, Inc. of Bristol, CT as recommended by Tighe & Bond in their letter of April 9, 2013 and contingent upon the review and approval by the Connecticut Department of Public Health (DPH). Further resolved, to authorize the Chair to execute a contract and related documents for such work upon submission of the required bonds and insurance certificates.

Mr. Murphy seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

4. Adjournment

Mr. Formica called for a motion to adjourn.

****MOTION (5)**

Mr. DiGiovanna moved to adjourn this Special Meeting of the East Lyme Water & Sewer Commission at 6:30 PM.

Mr. Zoller seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

Tab 14

Town of East Lyme

5-2

PO Box 519
Niantic, CT 06357
(860) 691-4114
Fax: (860) 691-0351

Date Entered into SP Log _____

APPLICATION FOR SITE PLAN APPROVAL

Date of Application: 4/19/13 Zone: GPDD

Applicant's Name: Gateway Development East Lyme, LLC

Applicant's Address: 10 Memorial Blvd, Suite 901, Providence RI 02903 Telephone: (401) 273-8600

Location of Affected Premises: See attached Assessor's Map/Block/Lot: _____

Owner of Record: Same as above Volume/Page: _____

Owner's Address: _____ Telephone: _____

DESCRIPTION OF SITE PLAN REQUESTED:

Site Plan for residential use pursuant to approved MDP

Signature of Owner: By: Gateway Development East Lyme, LLC
Theodore A. Harris, its attorney

Signature of Applicant: By: Theodore A. Harris, its attorney

Below this line for Office Use Only:

Attach a Site Plan {10 copies required}. A SITE PLAN DEMONSTRATING COMPLIANCE WITH ALL APPLICABLE ZONING CODE REQUIREMENTS MUST ACCOMPANY THIS APPLICATION.

Site Plan Attached: YES NO N/A

PERMIT FEE: \$300.00

SITE PLAN FEE \$200.00 300

STORM WATER \$200.00 300

STATE FEE: \$60.00

TOTAL DUE: \$ 660.00
CHECK #: 22303

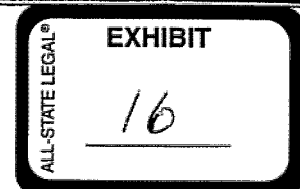
Date Approved: _____

Date Denied: _____

Approval subject to conditions below:

1. _____
2. _____
3. _____

Date: _____ Attest _____
East Lyme Zoning Chairman



**APPLICATION FOR SIT PLAN APPROVAL
CONTINUATION PAGE**

I. SITE LOCATION:

<u>Street/Description</u>	<u>Assessor's Map</u>	<u>Lot No.</u>
Ancient Highway	25.0	35
286 Flanders Road	26.0	2
284 Flanders Road	31.3	1
282 Flanders Road	31.3	2
Flanders Road	31.0	1

Portions of East Society Road (owned by the Town of East Lyme) east of its intersection on Society Road and west of its intersection with the parcel described as Assessor's Map 25, Lot 35.

Tab 15

Town of

P.O. Drawer 519
Zoning Department



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357
(860) 691-4114
Fax (860) 691-0351

June 26, 2013

CERTIFIED MAIL: 7012 3460 0001 1014 3775

Theodore A Harris
351 Main Street
PO Drawer 660
Niantic CT 06357

RE: Gateway Commons Residential Development

Dear Attorney Harris,

Please be advised that on June 20, 2013, the East Lyme Zoning Commission took the following action:

APPROVED w/conditions: the application of Theodore A. Harris, Esq. Agent for Gateway Development East Lyme LLC for site plan approval to construct 275 residential dwelling units on property identified in the application as:

Street:	Assessor's Map	Lot #
Ancient Highway	25.0	35
286 Flanders Rd.	26.0	2
284 Flanders Rd	31.3	1
282 Flanders Rd	31.3	2
Flanders Road	31.0	1

with the condition that (1) the RU-40 portion of the property be designated as open space with ownership to be determined later, and to be left in its natural existing state, except for possible walking trails, and (2) provide a non-regulated area for recreation space.

All actions shall be effective June 28, 2013.

If you have any questions, please do not hesitate to contact my office.

Sincerely,


William Mulholland
Zoning Official

WM/jl

Tab 16

TOWN OF EAST LYME

ZONING COMMISSION

JUNE 20, 2013

REGULAR MEETING MINUTES

Members Present:

Marc Salerno, Chairman

Matthew Walker

Terence Donovan

George McPherson

Norm Peck

Peter Lukas, Alternate (Sat for Regular Meeting)

James Liska, Alternate (Sat for Item 2)

William Dwyer, Alternate (Did not Sit)

FILED IN EAST LYME

CONNECTICUT

June 20, 2013 AT 8:20 AM PM
Marc Salerno, Jr.
EAST LYME TOWN CLERK

Members Absent:

Matthew Kane

Also Present:

Bill Mulholland, Zoning Officer

Holly Cheeseman, Ex-Officio (Entered at 8:30 p.m.)

Mr. Lukas was seated as a Regular Member in Mr. Kane's absence.

1. APPLICATION OF THE COMMON LOON RESTAURANT, FOR A SPECIAL PERMIT FOR OUTDOOR DINING AT PROPERTY IDENTIFIED IN THE APPLICATION AS 135 BOSTON POST ROAD, EAST LYME, CONNECTICUT.

Mr. Salerno stated they are putting up a wrought iron fence, and will be under the existing canopy.

Motion (1) Mr. Donovan moved to approve the application of the Common Loon Restaurant, for a special permit for outdoor dining at property identified in the application as 135 Boston Post Road, East Lyme, Connecticut with the following conditions:

- a. Allow speakers and low level music, turned off at close of patio.
- b. Patio will close at 9:00 on weekdays, and 10:00 on weekends.

Seconded by Mr. McPherson.

Motion Passed 6-0.

This will be published next Thursday, June 27th, and will become effective on June 28th.

****Mr. Peck recused himself for Item 2, and Mr. Liska sat as a Regular Member for Item 2.**

This will be published next Thursday, June 27th, and will become effective on June 28th.

4. REQUEST OF THEODORE A. HARRIS, ESQ., AGENT FOR GATEWAY COMMONS, FOR A SITE PLAN MODIFICATION FOR PROPERTY KNOWN AS GATEWAY DEVELOPMENT DISTRICT.

Mr. Salerno stated the conceptual site plan was approved by the Zoning Commission; this is a modification of that.

Attorney Harris stated this is an application for site plan approval. This is the first phase of Gateway. According to the Master Development Plan on Gateway that was approved in July of 2008, they are applying for administrative site plan approval.

The site is in the vicinity of Exit 74 of I-95, and it bounded by East Society Road, Subdivisions, Route 1, and Flanders Road. The main challenge of the site is access. There is no access off of I-95. Offsite improvements to get access to the site would cost in the range of 12 to 15 million. They would not be able to sustain that. KGI and Konover Group have formed an alliance, each lending their expertise regarding the potential development of the site. The Master Development Plan is a conceptual site plan for the site. There are general locations, traffic flow, and list of design criteria for the site. It covers setbacks, heights, design criteria, siding, architectural controls. It is similar to a special permit without the final site plan. They had three public hearings before the Zoning Commission. It is a phased plan, and it will not happen overnight. During the public hearings there was spirited comment from the public. The Zoning Commission denied it after that. They then reached out to the neighborhood and had informal workshops with the Zoning Commission. They revised the structure, and returned with a new Master Development Plan. The Zoning Commission did approve the development of the site. Then step 2 was to approve the application of the Master Development Plan. That public hearing was quite different; there was only one person with public comment during that hearing in July of 2008. The Zoning Commission did approve the Master Development Plan on July 31, 2008. They had anticipated construction immediately, but they did not anticipate the financial crisis of 2008. They continued looking for users of the property. They are now confident that there is a demand for high end residential units, and they have designed for that phase. There is also renewed interest in the commercial end, and they have a letter of intent from a major commercial tenant. They are here to review the residential units. There are more wetlands on the site than anticipated. They want to avoid wetland impacts and that has dovetailed in with the type of building they are proposal, which are multi story buildings. They are able to manipulate around the wetlands. There are no direct impacts, just upland review areas. The Master Development Plan provides standards for parking which are different than the zoning regulations. The goal is to minimize impervious surfaces; there are no masses of black top. The master development plan is within the national standard and is based on the expertise of the Konover Group. There is also abundant room on the roadways for parking.

Mr. Walker read a letter from Mr. Mulholland.

Ray Gladwell of DL Companies of Hartford discussed the Site Plan. The site is right off of I-95, and is about 160 acres. The development would take up a portion of plus or minus 30 acres. The topography on the site is a challenge. The site can be served by public utilities. They will improve approximately 3800 feet of East Society Road all the way into the site. They will improve it to Town Road Standards. The road from East Society Road will continue through the site to Flanders Road as the project is developed. There will be 10 buildings with a total of 275 units, with 2 garages per building. There will

be 544 parking spaces. 42 of those will be with the clubhouse and the pool. There will 502 spots distributed among the site. They got to those numbers by published information as well as comparing this type of development in other communities. 1.79 spaces per unit are what that is based on. They came up with a number of 493, and increased it to 502. Each building will get two 8 car garages.

Mr. Gladwell presented the following exhibits:

Exhibit 1	Parking Memorandum
Exhibit 2	Wetlands Permit

Mr. McPherson asked if everyone would get a garage.

Mr. Gladwell stated the rent is higher with a garage; there will be a mix of 2 bedroom and 1 bedroom apartments. There will be emergency access to the site from Flanders Road. Utilities will be outside of the I-95 off ramp area because of future projects by the State to improve the ramps.

Mr. Salerno stated he understood that the entire infrastructure was to be constructed.

Mr. Harris stated that was to be the infrastructure assigned with each phase. This phase involves improvement of East Society Road; the infrastructure is to be completed with the phases.

John Mancini of DL Companies stated they have already submitted an application to the State for an interface with Exit 73, they have discussed with the DOT and they are comfortable with the traffic going to East Society Road. They believe the infrastructure is to be completed per each phase.

Mr. Salerno stated they put that in to make sure the whole project was developed.

Mr. Harris stated the infrastructure is assigned with each phase. It is not for the whole development. Nobody will be able to put all of those costs up front.

Mr. Gladwell stated the closest point to a property line is about 40 feet from a corner of a parking lot.

Mr. Harris stated there is a buffer requirement, with an option to substitute decorative fencing. The area is undeveloped.

Mr. Mancini stated they were much closer to the buffer with their original proposal. They have pushed the development to the West in this proposal.

The landscape architect prepared a plan with approximately 325 trees of various varieties, 1200 shrubs. The nearest residential building will be 600 feet from the highway. The road will be a Town road, and will go all the way through when it is finished. There is presently a mature forest on the site, which is pretty dense.

Mr. Peck asked if they have designated open space.

Mr. Harris stated it is not formal open space, but because of the wetlands it is not developable.

Mr. Peck stated there is substantial buildable fronting on town roads and either side on the property could theoretically be sold off.

Mr. Harris stated single family is not allowed in this zone.

Mr. Salerno asked if they would be willing to designate open space.

Mr. Harris stated the RU-40.

Mr. Mulholland stated the RU-40 cannot be developed.

Mr. Mancini stated the only way to develop the RU-40 would be if a developer bought the house above the land and then developed.

Mr. Gladwell stated there would be a mix of street lights, and there would be 116 street lights on the site.

Mr. Salerno asked who owns the lighting.

Mr. Harris stated the Town would own the lighting.

Mr. Gladwell stated the lighting on the poles on the street would be 20 feet high, and the onsite lights would be 14 to 16 feet tall. Also the buildings would be illuminated. There will be zero foot candles to the adjacent property. They will not be LED, they will be night sky compliant and be 72 watts.

The utilities served will be water and sewer from Flanders, the gas service will be from Flanders, and communication will be from East Society.

Mr. Harris stated they will get water and sewer approval after, it is assessed for water and sewer so they don't anticipate any issues.

Mr. Gladwell stated there will be 3 detention ponds on the site, and 4 rain gardens which allow storm water to go back into the ground.

Mr. Harris stated they had significant discussion with the Inland Wetlands Agency to make sure they are not drying up the wetlands. The Inland Wetlands Agency hired their own expert to analyze the plan.

Mr. Gladwell stated the rooftop water goes into rain gardens, and if that overflows then it will go into the driveway then will be piped to the detention pond. They will use erosion controls and sediment traps, there will be sediment control measures for each building, silt fence will be installed, and it has been planned with the town engineering staff.

Mr. Salerno asked if there will be an association.

Mr. Harris stated they will be rented units.

Mr. Gladwell presented the following exhibits:

Exhibit 3	Overall Site Plan
Exhibit 4	Overall Landscape Plan
Exhibit 5	East Society Road and Utility Access Plan
Exhibit 6	Typical Building Planting Plan
Exhibit 7	Overall Lighting Plan
Exhibit 8	Overall Site Utility Plan
Exhibit 9	Initial Erosion Control Plan
Exhibit 10	Final Erosion Control Plan

Mr. McPherson asked if there will be access to Route 1.

Mr. Gladwell stated potentially in the future.

Architect, Tim Wentz of Bryn Mawr, Pennsylvania stated they will be 3 story buildings in front and 4 stories in back. Garden level units will only be half of the building. It is classified as 3 stories with a basement. They will use a variety of materials on the building, the base will be cultured stone. They have not decided if they will use hearty plank or vinyl. They will be varying heights of the materials, and will probably use different colors, all of the buildings will be different color schemes, but will be earth tones and will complement each other. All of the buildings will be the same, but some will have 5 less units.

Mr. Mulholland stated it will be worked out so there are no more than 275 units.

Mr. Wentz stated they will use very large windows, and each apartment will have its own balcony.

Mr. Donovan asked what the heat source will be.

Mr. Wentz stated it will be a gas fired split system. The units will be on the balcony. There will be studio apartments, 1 bedroom apartments and 2 bedroom apartments.

Mr. McPherson asked if they will be handicapped accessible.

Mr. Wentz stated every unit on the first floor will be.

Mr. Donovan asked if there is a fire protection system.

Mr. Wentz stated it will have fire sprinklers throughout.

Mr. Salerno asked the height of the buildings.

Mr. Harris stated they will be 45 feet.

Mr. Wentz stated the clubhouse will be 5700 square feet. The materials and the color palette will be very compatible with the project. There will be a leasing center, fitness center, media center, billiards area, central great room, serving kitchen, pool area, activity rooms, and locker rooms. The fitness center will be accessible when the clubhouse is closed.

Mr. Salerno asked if there would be a restaurant.

Mr. Wentz stated no there would be a serving kitchen with no stove, but it will have a sink, dishwasher, refrigerator, and microwave.

Mr. Salerno asked if they considered paved trails that connect the units.

Mr. Harris stated they can see if that works topographically.

Mr. Wentz stated the pool will be fenced with landscape around it. The garages will be for 8 cars, with gable ends, and will be compatible with the residential buildings. The back will be plain, but will be facing a steep slope. The bays are 11 feet wide.

Mr. Wentz submitted the following exhibits:

Exhibit 11	Residential Building Floor Plan and Front Elevation
Exhibit 12	Residential Building Rear and Side Elevation
Exhibit 13	Residential Building Floor Plans
Exhibit 14	Residential Unit Plans
Exhibit 15	Residential Unit Plans
Exhibit 16	Clubhouse Front Elevation and Floor Plan
Exhibit 17	Side and Rear Elevation of Clubhouse
Exhibit 18	Garage

Mr. McPherson suggested they re-think putting an elevator in the buildings.

Mr. Salerno asked if there was any open space designated for fields, or playgrounds.

Mr. Harris stated they have to make sure they can physically do it. He respectfully disagreed with the Chairman regarding the phasing of the infrastructure. It was originally intended to be phased in. This phase alone they will be putting 1 Million dollars into East Society Road.

Mr. Mulholland agreed with Mr. Harris, that each phase was to receive a CO as it was phased in.

Mr. Salerno stated he is concerned the residential will be built and the Commercial will not. They don't want just a portion of the project.

Mr. Harris stated the developer has purchased the lion share of the property. They do not intend to let it lay stagnant. They currently have a letter of intent for an anchor store. They firmly believe it will happen.

David Getman of KGI stated they have spent in excess of 5 million dollars to get to this point. As soon as possible they will be getting everything approved, they are trying to keep the project rolling.

Mr. Peck stated he likes the project, he would prefer the RU-40 zone be designated as permanent open space, and it will enhance the value of the project.

Mr. Getman stated they would be willing to look at that.

Mr. Peck stated it looks developable and that could be a condition of approval, the owner of which to be determined later.

Mr. Walker stated he is impressed with the design of the apartment, the landscaping, it will be a benefit to the town, and he hopes this sparks commercial development.

Mr. McPherson mentioned the lack of press coverage tonight.

Mr. Salerno stated he likes what he sees. The architecture is very nice. He would like to see something done with open space for recreation.

Mr. Harris stated they will work on that.

Motion (4) Mr. McPherson moved to approve the application of Theodore A. Harris, Esq., Agent for Gateway Development East Lyme, LLC for site plan approval to construct 275 residential dwelling units on property identified in the application as:

Ancient Highway	Map 25.0	Lot 35
286 Flanders Road	Map 26.0	Lot 2
284 Flanders Road	Map 31.3	Lot 1
282 Flanders Road	map 31.3	Lot 2
Flanders Road	Map 31.0	Lot 1

With the following conditions:

- a. The RU-40 Portion of the property be designated as open space with ownership to be determined.
- b. Provide a non-regulated area for recreation space.

Seconded by Mr. Walker.

****Mr. McPherson rescinded his Motion.**

Motion (5) Mr. McPherson moved to approve the application of Theodore A. Harris, Esq., Agent for Gateway Development East Lyme, LLC for site plan approval to construct 275 residential dwelling units on property identified in the application as:

Ancient Highway	Map 25.0	Lot 35
286 Flanders Road	Map 26.0	Lot 2
284 Flanders Road	Map 31.3	Lot 1
282 Flanders Road	map 31.3	Lot 2
Flanders Road	Map 31.0	Lot 1

With the following conditions:

- a. The RU-40 Portion of the property be designated as open space with ownership to be determined later, and to be left in its natural existing state, except for possible walking trails.
- b. Provide a non-regulated area for recreation space.

Seconded by Mr. Walker.

Motion Passed 5-0-1 (Mr. Donovan-Nay)

This will be published on June 27th and will be effective on June 28th.

5. APPROVAL OF MINUTES OF JUNE 6, 2013

Motion (60 Mr. Walker moved to approve the Minutes of June 6, 2013.

Seconded by Mr. McPherson.

Motion passed 5-0-1 (Mr. Donovan – Nay)

OLD BUSINESS

1. SIGN SUBCOMMITTEE

They did not meet.

2. OUTDOOR DINING BARS SUBCOMMITTEE

They did not meet.

NEW BUSINESS

1. ANY BUSINESS ON THE FLOOR, IF ANY BY THE MAJORITY VOTE OF THE COMMISSION

Mr. Peck stated there are 5 lots in the Rocky Neck Business Park available. This Commission could get an application for construction at any time. The architectural review was previously done by the Economic Development Commission. The architectural review is required by deed.

Mr. Mulholland asked if there was an expiration on that. He will look into that and report back to them at the next meeting.

2. ZONING OFFICIAL

Mr. Mulholland stated he has been busy. The blue house across from Midway Mall has come down. There will be a 10000 square foot commercial building there. Henny Penny is going to try to stay in

business while the second store is being built. The architect of Gary Smith's building is finishing up plans. The Norton job is being shopped around.

Mr. Donovan asked about that sidewalk on Main Street.

Mr. Mulholland stated he has five years, but he will not have a CO until he does it.

He also anticipates Gateway back in the next few weeks.

3. COMMENTS FROM EX-OFFICIO

Ms. Cheeseman had already left the meeting.

Mr. Salerno read her report, there was a Special Town Meeting and they appropriated money for the Board of Education, and for town vehicle lease and/or purchase, and for CNRE, Capital Improvement, Local Capital Improvement Plan, Town Aid Road Program, and the new playscape at Bride Brook, and they approved the new one year contract with the Fire Fighters union.

4. COMMENTS FROM ZONING BOARD LIAISON TO PLANNING COMMISSION

Mr. Donovan stated they discussed Gateway. There was some housekeeping on the FEMA Flood Maps, and there was discussion of parking in front of businesses.

Mr. Mulholland stated the new flood maps are effective on August 5th.

5. COMMENTS FROM CHAIRMAN

There were no comments.

6. ADJOURNMENT

Motion (7) Mr. Lukas moved to adjourn the meeting at 10:50 p.m.

Seconded by Mr. Donovan.

Motion Passed 6-0.

Respectfully Submitted,

Karen Miller Galbo
Recording Secretary

Tab 17

PARKING INFORMATION

ITEM #	ITEM	REQUIREMENTS	PROPOSED
1	PARKING REQUIRED BY TOWN	RESIDENTIAL: 275 UNITS X (1.78 PARKING SPACES PER UNIT) = 483 PARKING SPACES	486 PARKING SPACES
2	MINIMUM PARKING DIMENSIONS	CURBHOUSE: NO REQUIREMENT 483 + 0 = 483 TOTAL SPACES REQUIRED 9' X 16'	48 PARKING SPACES 531 SPACES 9' X 20'
3	MINIMUM ASIDE WIDTH	24'	24'
4	MINIMUM INTERIOR LANDSCAPING	3 CANOPY TREES (88 REQUIRED) 2 LOWER STORY TREES (46 REQUIRED) 21 LOWER STORY TREES (1178 REQUIRED) 10% PARKING SPACES	73 CANOPY TREES 51 LOWER STORY TREES 1178 SPACES 15-20%
5	MINIMUM LANDSCAPED AREA	10%	
6	LANDSCAPE BUFFER	50' BUFFER OR 6' HIGH FENCE SCREENING	145' AND 6' HIGH FENCE SCREENING SCREENING WIDTH: 50'

* PARKING REQUIREMENTS BASED UPON STANDARDS DEVELOPED BY QUALIFIED PROFESSIONALS AS PROVIDED IN LUP.

INLAND/WETLANDS INFORMATION AND LEGEND

	EXISTING	PROPOSED
AREA OF WETLAND IMPACT	N/A	0 S.F. / 0 ACRES
AREA OF INLAND REVIEW AREA IMPACT	N/A	12,719 S.F. / 3.12 ACRES

ADOPTED INLAND REVIEW AREA (WITHIN 100' OF WETLANDS)

ZONING INFORMATION

LOCATION:		EAST LYME, CONNECTICUT			
ZONE:		GATEWAY PLANNED DEVELOPMENT DISTRICT			
USE:		RESIDENTIAL			
ITEM #	ITEM	REQUIREMENTS	EXISTING	PROPOSED	VARIANCE
1	MINIMUM ACCESS POINTS	TWO ACCESS POINTS (500 AC.)	N/A	ONE (1) MAIN ACCESS AND ONE (1) EMERGENCY ACCESS NO	NO
2	NUMBER OF UNITS	5,275	N/A	275	NO
3	MAXIMUM BUILDING HEIGHT	50 FEET	N/A	46 FEET	NO
4	CONDOUSE	BUILDING/STRUCTURE AREA 40% TOTAL	0	311 AC./A3.15 1.91 PERCENT	NO

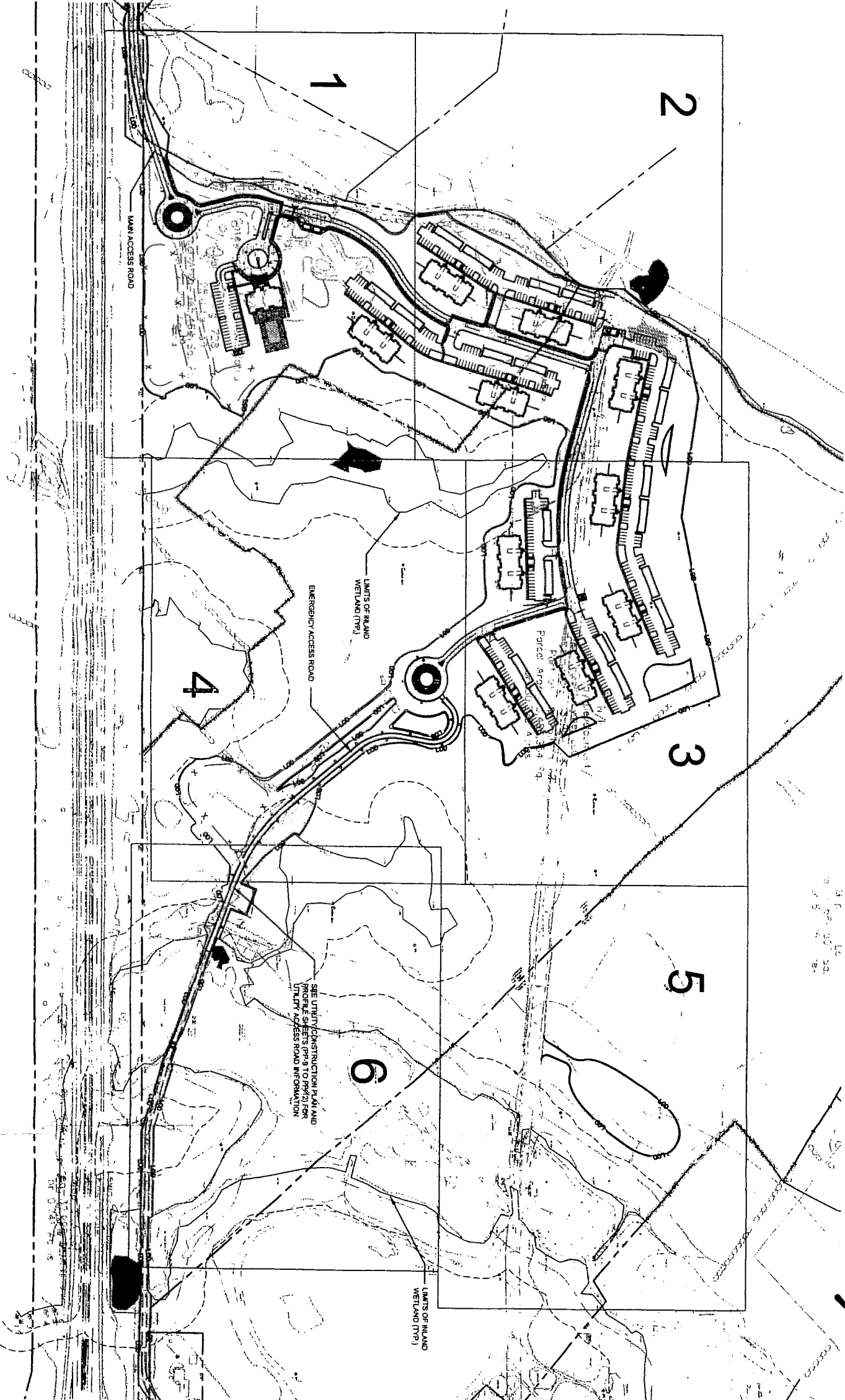
SIGN LEGEND

SIGN NO.	C-POST NO.	LEGEND
A	31-05622	STOP 30"
B	31-02802	YIELD
C	31-0623	TRUCK STOP AHEAD
D	31-0648	TRUCK STOP AHEAD
E	31-1528	TRUCK STOP AHEAD
F	31-0523	TRUCK STOP AHEAD
G	31-1178	TRUCK STOP AHEAD

NOTE: UNAPPROVED SIGNS TO BE INSTALLED IN PRE-BOOKING (SEE DETAIL)

LEGEND

EXISTING PROPERTY LINE	---
CONSTRUCTION LIMIT LINE	---
LIMITS OF CLEARING	---
CONCRETE PAVEMENT	---
CONCRETE/BRITANNIUS CONCRETE CURB	---
CURB/EDGE OF PAVEMENT CHANGE	---
FLY-PAVE POROUS PAVEMENT SYSTEM	---
STANDARD DUTY BRITANNIUS CONCRETE PAVEMENT	---
HEAVY DUTY BRITANNIUS CONCRETE PAVEMENT	---
RG - RAIN GARDEN	---
SWMS - STORMWATER MANAGEMENT BASIN	---
ALL PAVEMENT ON EAST SOCIETY ROAD SHALL BE HEAVY DUTY BRITANNIUS CONCRETE PAVEMENT	---
SEE ROADWAY CONSTRUCTION PLAN AND PROFILE SHEETS (PP-1 TO PP-4) FOR EAST SOCIETY ROAD IMPROVEMENTS	---



GATEWAY COMMONS
FLANDERS ROAD/ SOCIETY ROAD
EAST LYME, CONNECTICUT



200 Rte. 1, East Lyme, CT 06320
(860) 336-1400
(860) 336-1401

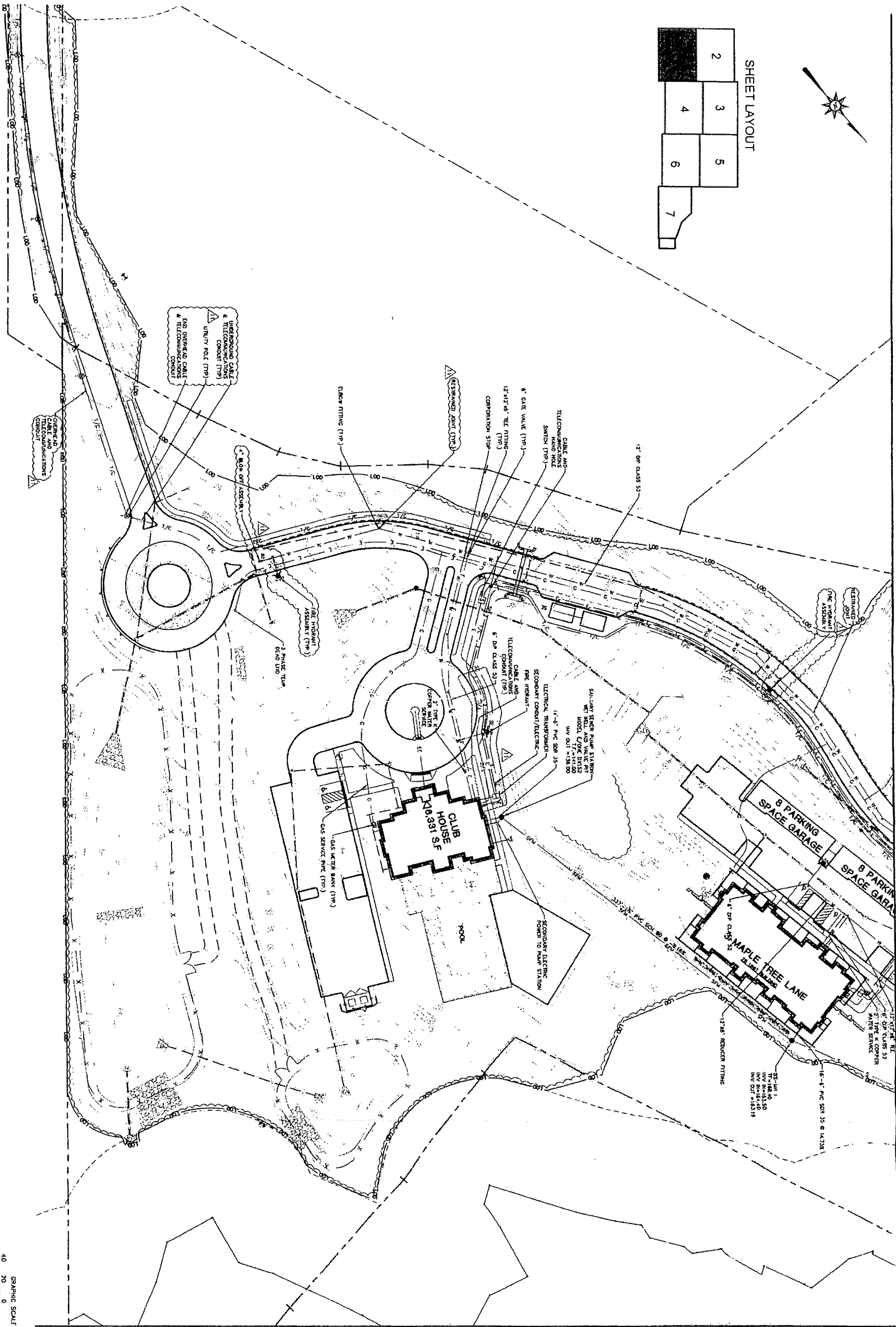
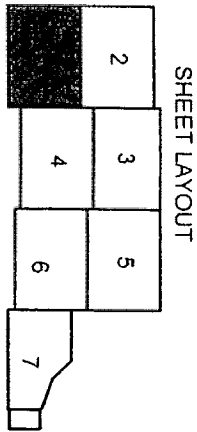
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4	06/25/13
5	10/22/13
6	12/06/13
7	01/10/14

Designed	B.K.B.
Drawn	E.L.Z.
Checked	...
Approved	...
Scale	1"=150'
Project No.	11C3984
Date	02/23/13
CAD File	SP11C3984.dwg

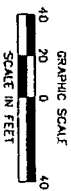
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Sheet No.

MATCHLINE- SEE SHEET SU-2



MATCHLINE- SEE SHEET SU-4



GATEWAY COMMONS
FLANDERS ROAD/ SOCIETY ROAD
EAST LYME, CONNECTICUT

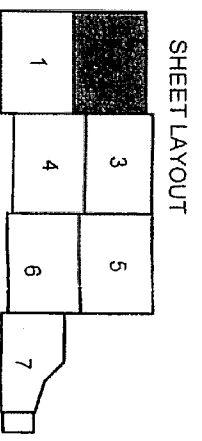
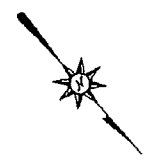
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20	04/14/13

DESIGNER	
Project No.	13-004
Date	07/25/13
Scale	1"=40'
Sheet No.	SU-1
Sheet Title	SITE UTILITY PLAN

SU-1

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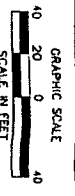
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MATCHLINE- SEE SHEET SU-1

MATCHLINE- SEE SHEET SU-3

MATCHLINE- SEE SHEET SU-4



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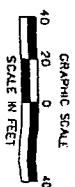
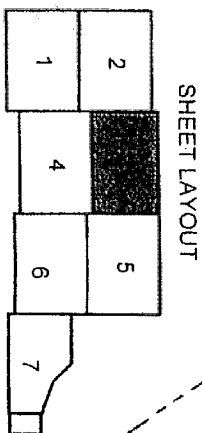
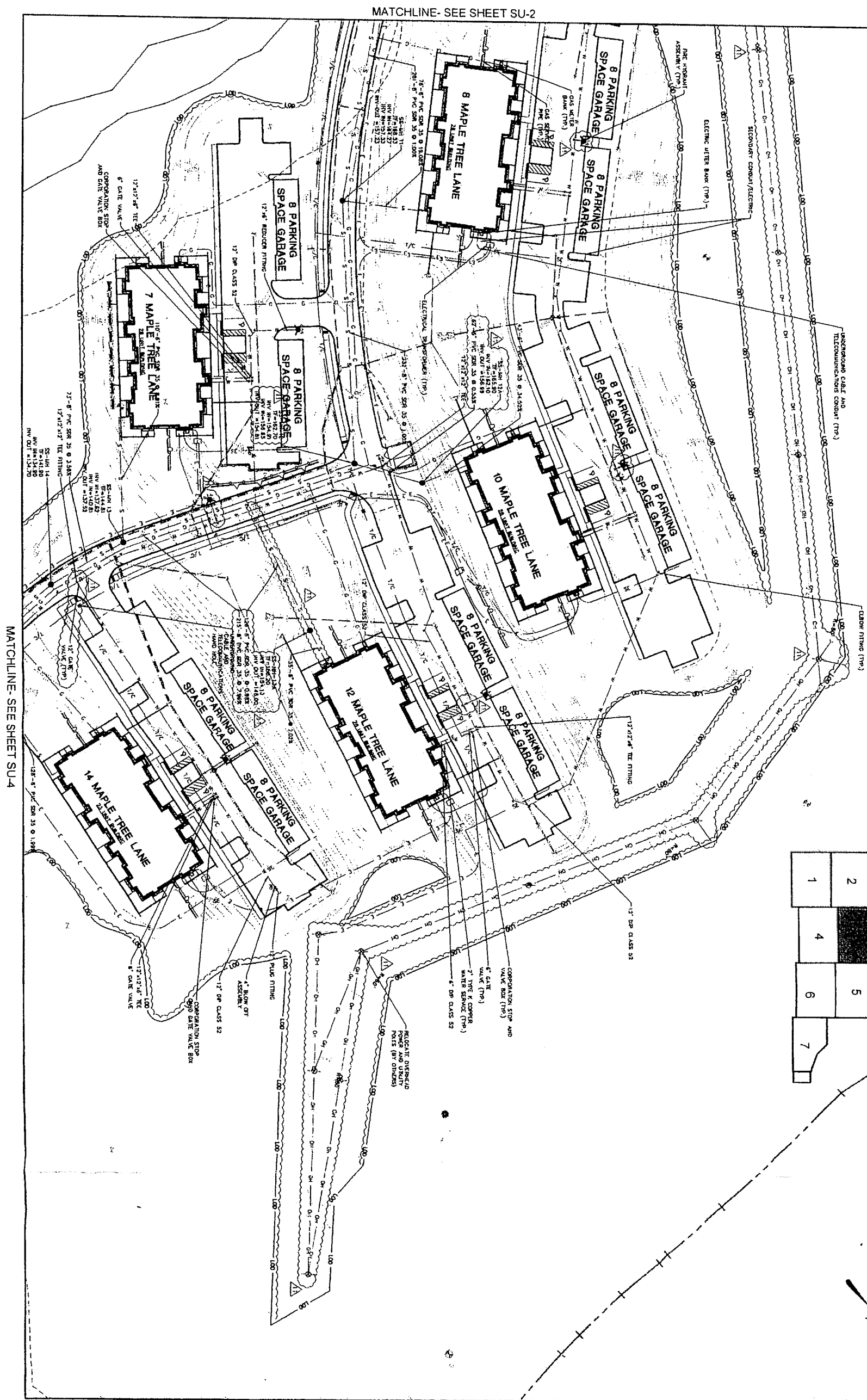
GATEWAY COMMONS
FLANDERS ROAD/ SOCIETY ROAD
EAST LYME, CONNECTICUT



B+C Companies
ARCHITECTURE
ENGINEERING
LANDSCAPE ARCHITECTURE
LAND SURVEYING
LAND PLANNING

355 Main Street
East Lyme, CT 06320
860.439.7444
www.bplusc.com

SU-2
SITE UTILITY
PLAN



MATCHLINE- SEE SHEET SU-5

GATEWAY COMMONS
FLANDERS ROAD/ SOCIETY ROAD
EAST LYME, CONNECTICUT

Companies

ARCHITECTURE
ENGINEERING
ENVIRONMENTAL
LAND SURVEYING

205 Research Parkway
Middletown, CT 06440
(203) 633-1408
(203) 633-3515 Fax

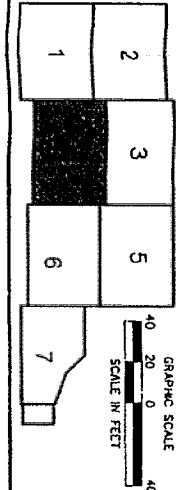
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11	02/17/14

Designer: R.B.C.
 Drafter: K.L.C.
 Checker: _____
 Approved: _____
 Scale: 1"=40'
 Project No.: 11C1544-0
 Date: 02/15/14
 CAD File: SUT11236-0

Title: _____

SITE UTILITY
 PLAN

5-3



SEE PROFILE SHEETS (PP-9 TO PP-12) FOR UTILITY ACCESS ROAD INFORMATION

Ref (a) : HC11C394401 HC11C396401 HC11C395402 HC11C393421 HC11C398422 HC11C394431 HC11C395432 XY11C395401 HC11C394404 HC11C396403

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11	09/23/74

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EAST LYME, CONNECTICUT

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Companies
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ENGINEERING
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LAND SURVEYING

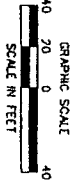
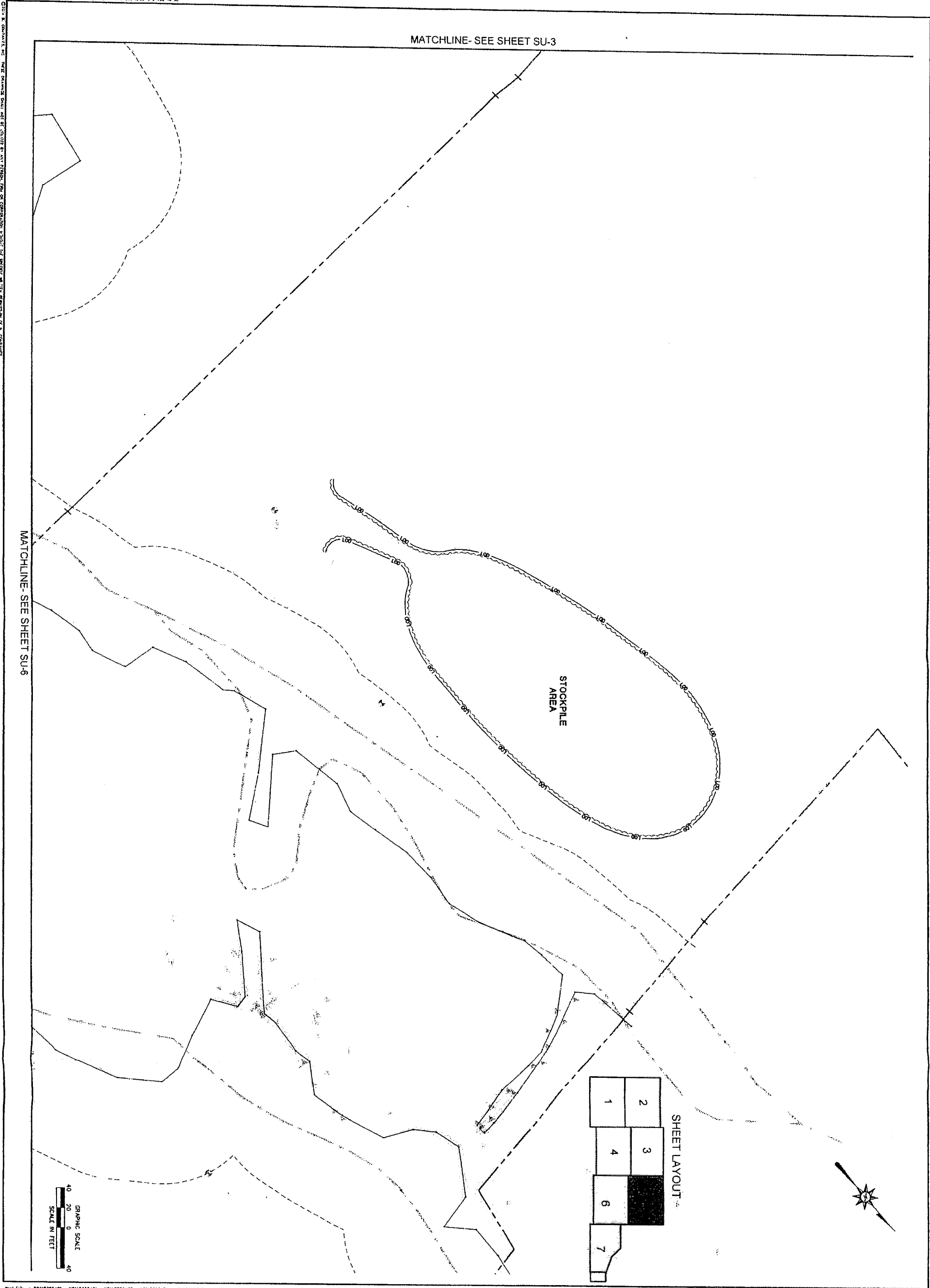
255 Research Parkway
Meriden, CT 06450
(203) 630-1406
(203) 630-2815 Fax

SITE UTILITY PLAN

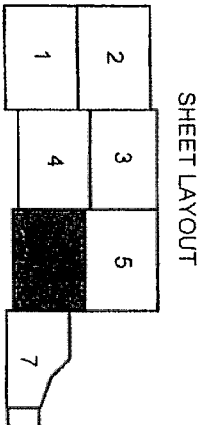
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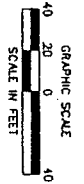
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484	03/12/23</



MATCHLINE- SEE SHEET SU-7



GATEWAY COMMONS
FLANDERS ROAD/ SOCIETY ROAD
EAST LYME, CONNECTICUT

355 Rutherford Pharmacy
Henderson, CT 06430
(203) 850-1406
(203) 650-2615 Fax

ARCHITECTURE
ENGINEERING
ENVIRONMENTAL
LAND SURVEYING

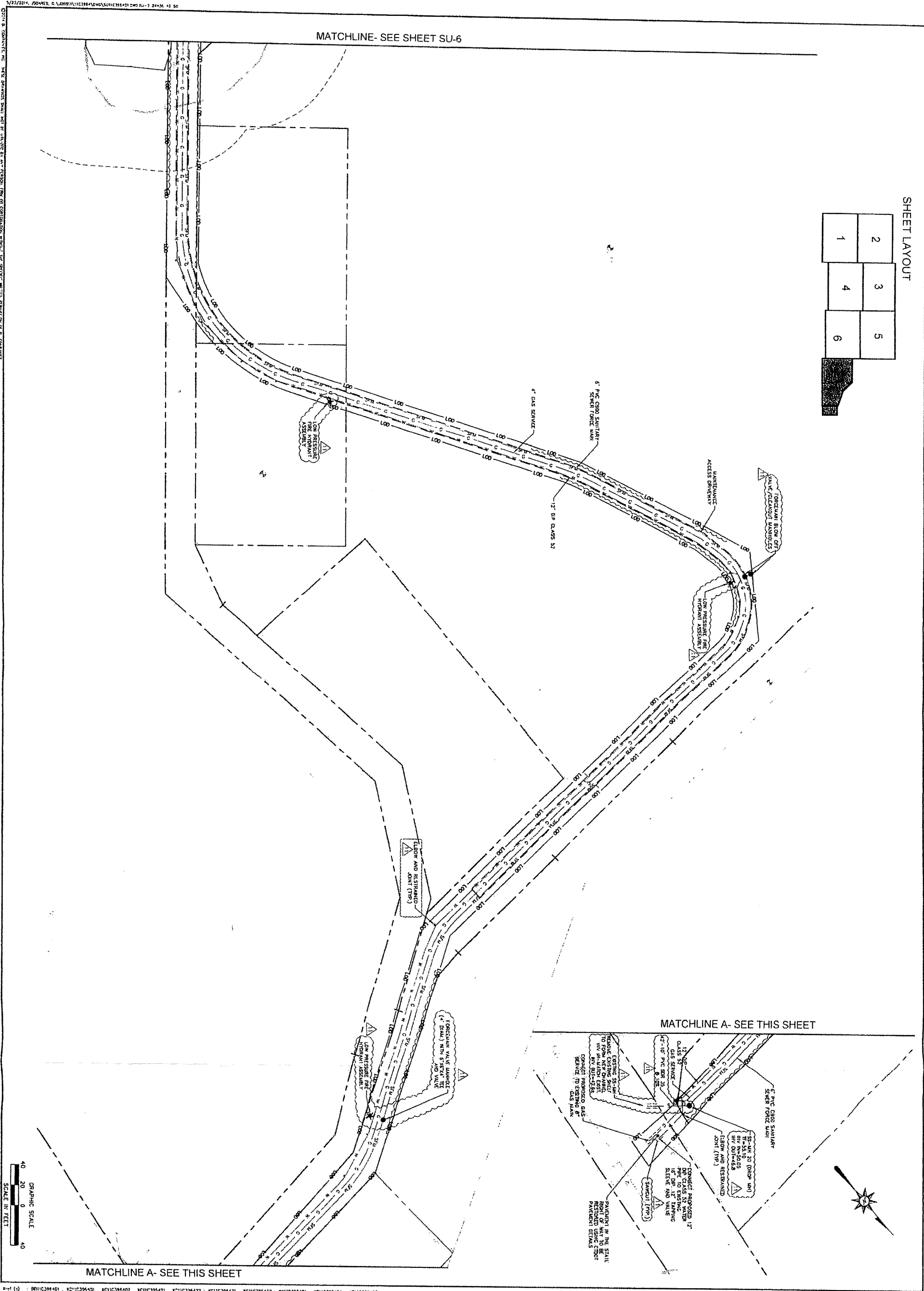
REVISIONS	
Date	Desc
04/16/73	ISSUE ENGINEER AND PLANNER COMMENTS
07/11/73	ISSUE CONSTRUCTION AND FINANCIAL REVISIONS
08/19/73	ISSUE JAIL REVIEWS
06/25/73	ISSUE COMMENTS
10/27/73	CONSTRUCTION DOCUMENTS
12/26/73	CLASP OF REVIEW
01/23/74	FINAL FOR CONSTRUCTION
03/19/74	ISSUE WATER AND SEWER COMMENTS
04/28/74	ISSUE WATER AND SEWER COMMENTS
05/12/74	ISSUE WATER AND SEWER COMMENTS
05/22/74	POST BID SET REVISIONS

SITE UTILITY PLAN

5U-6

SHEET LAYOUT

2	3	5
1	4	6



Revisions

No.	Date	Description
1	01/11/13	ISSUED FOR PERMIT
2	01/11/13	ISSUED FOR PERMIT
3	01/11/13	ISSUED FOR PERMIT
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Companies

ARCHITECTURE
ENGINEERING
LAND SURVEYING

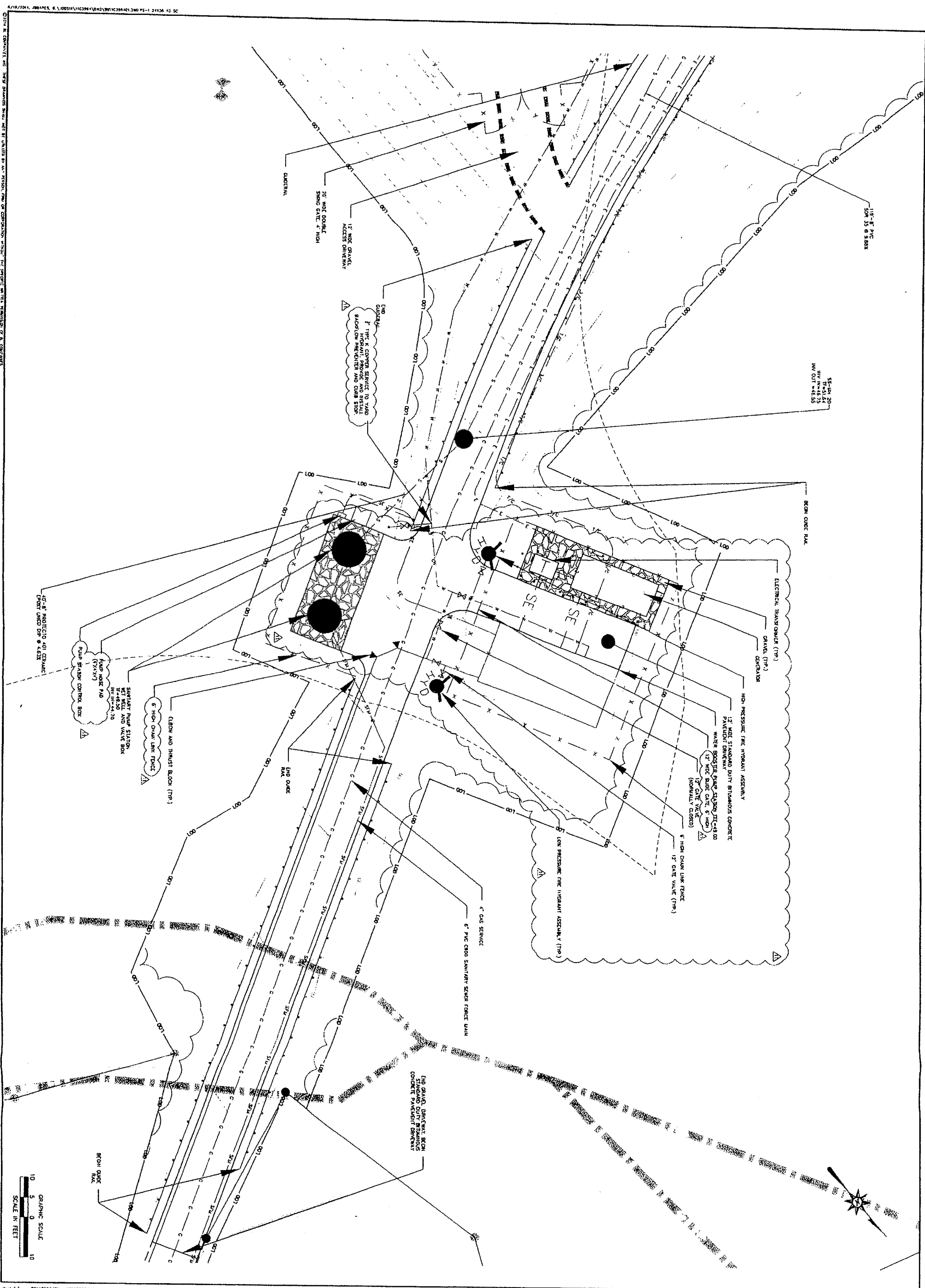
200 Rockwell Parkway
East Lyme, CT 06320
(860) 429-1400
(800) 800-2815 Fax

GATEWAY COMMONS
FLANDERS ROAD/ SOCIETY ROAD
EAST LYME, CONNECTICUT

SU-7

SITE UTILITY
PLAN

Sheet No. _____



Xref (4) : DD11C396401, XC11C396401, XC11C396402, XC11C396421, XC11C396422, XC11C396431, XC11C396432, XC11C396401, XC11C396404, XC11C396403

REVISIONS		
No.	Date	Desc
1	04/25/73	DESIGN ENGINEER AND PLANNING COMMENTS
2	07/17/73	HYDRO CONDITIONS AND FLOODING SUPERSEDED
3	06/10/73	FOUNDING TABLE REVISIONS
4	08/23/73	SOILS COMMENTS
5	10/22/73	CONSTRUCTION DOCUMENTS
6	11/20/73	CLOSURE OF REVIEW
7	01/30/74	TABLE FOR CONSTRUCTION
8	03/24/74	DESIGN WATER AND SEWER COMMENTS
9	04/16/74	DESIGN WATER AND SEWER COMMENTS
10	05/27/74	DESIGN WATER AND SEWER COMMENTS
11	05/23/74	DESIGN AND REVISION COMMENTS

Deso
TOWN ENGINEER AND PLANNER COMMENTS
HYDRO COMMENTS AND AWWA INFORMATION
FINDING TABLE REVISIONS
OGFA COMMENTS
CONSTRUCTION DOCUMENTS
CLOSED BY OWNER
READY FOR CONSTRUCTION
TOWN WATER AND SEWER COMMENTS
TOWN WATER AND SEWER COMMENTS
TOWN WATER AND SEWER COMMENTS
POST BY LET REVISIONS

Scale	1" = 20'
Project No	11-0398
Date	07/75/
CAD File	SU1:GJ964
Title	WATER AND WASTEWATER PUMP STATION DETAILING

PS-1

GATEWAY COMMONS
FLANDERS ROAD/ SOCIETY ROAD
EAST LYME, CONNECTICUT

Companies

ARCHITECTURE
ENGINEERING
ENVIRONMENTAL
LAND SURVEYING

235 Research Parkway
Meriden, CT 06450
(203) 632-1406
(203) 632-2615 Fax

Tab 18

Gateway Commons Development
East Lyme, Connecticut
25-Jun-13
Flow Demand Worksheet

PHASE 1 (RESIDENTIAL):

SEWER:

		Flow (Gallons)	
		Bedrooms	Per Day-gpd)
96 1 bedroom units ¹		96	14,400
179 2 bedroom units ¹		358	53,700
275 Total Units		454	68,100
Clubhouse & Pool Flow	6930 square feet (sf)		
	200 sf/person		
	10 gpd/person ²		347
	50 gpd/bather	50	2500
Total Anticipated Sewer Demand (gpd)			70,947

WATER:

Total Anticipated Water Demand (gpd) (assumed to be 110% of sewer demand) 78,041

PHASE 2 (RESIDENTIAL):

SEWER:

		Flow (Gallons)	
		Bedrooms	Per Day-gpd)
44 1 bedroom units ¹		44	6,600
81 2 bedroom units ¹		162	24,300
125 Total Units		206	30,900
Total Anticipated Sewer Demand (gpd)			30,900

WATER:

Total Anticipated Water Demand (gpd) (assumed to be 110% of sewer demand) 33,990

Totals Water & Sewer

Sewer

Phase I 70,947

Phase 2 30,900

101,847

Water

78,041

33,990

112,031

ALL-STATE LEGAL®

EXHIBIT

17

FUTURE PHASE 3 (COMMERCIAL):

SEWER:

		Flow (Gallons Per Day-gpd)
Estimated Retail Bldg Area (Total)	415,000 Square Feet ³	41,500
Estimated Restaurant Seating	272 Seats (est.) ⁴	8,160
	10000 sf Additional 50% design flow ⁴	12,240
1.2 Factor of Safety		64,488
Total Anticipated Sewer Demand (gpd)		64,488

WATER:

Total Anticipated Water Demand (gpd) (assumed to be 110% of sewer demand)	70,937
---	--------

OVERALL ESTIMATED GATEWAY DEVELOPMENT DEMANDS FOR ALL PHASES OF RESIDENTIAL AND COMMERCIAL:



Tab 19

Town of

Office of Water & Sewer Commission
Tel: 860-739-6931 • Fax: 860-739-6930



East Lyme

Post Office Box 519
Niantic, Connecticut 06357

March 17, 2014

GDEL Residential, LLC
10 Memorial Boulevard, Suite 901
Providence, RI 02903

Re: Gateway Development Site

To Whom It May Concern:

This is to confirm that there is water and sewer availability to the Gateway Development Site located on Flanders Road, Niantic.

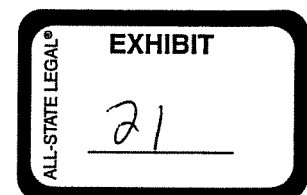
Please do not hesitate to contact me at (860) 739-6931, Ext 139 if you have any questions concerning this matter.

Sincerely yours,

Bradford C. Kargl
Municipal Utility Engineer

C: East Lyme Water and Sewer Commission

4-1



Tab 20

SHIPMAN & GOODWIN LLP®
COUNSELORS AT LAW

Timothy S. Hollister
Phone: (860) 251-5601
Fax: (860) 251-5318
thollister@goodwin.com

June 17, 2014

VIA PDF

Mark S. Zamarka, Esq.
Waller Smith & Palmer, P.C.
52 Eugene O'Neill Drive
P. O. Box 88
New London, CT 06320

Mr. Bradford C. Kargl
Municipal Utility Engineer
Town of East Lyme
108 Pennsylvania Avenue
P. O. Box 519
Niantic, CT 06357

Re: Gateway Development

Dear Mark and Brad:

As you know, we represent Landmark Development and Jarvis of Cheshire, who have become aware that the residential apartments of the so-called "Gateway" development are now proceeding with construction. We assume this residential development has been granted a sewer connection. We have reviewed WSC and PZC minutes since 2008 and cannot find any WSC allocation to or approval of the development. Rather than file a FOIA request, I thought I would pose questions to you directly:

1. When and how were the Gateway apartments approved to connect to the East Lyme sewer system?
2. How much sewer capacity has been allocated to that development? (Our ballpark estimate is 45,000 gallons.)

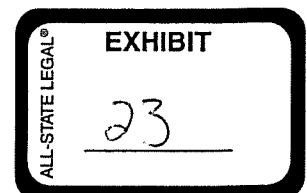
We would appreciate responses to these questions by Monday, June 30, 2014. Thank you.

Very truly yours,



Timothy S. Hollister

TSH:ekf
3489640



Tab 21

WALLER, SMITH & PALMER, P.C.

COUNSELORS AT LAW

HUGHES GRIFFIS
EDWARD B. O'CONNELL
TRACY M. COLLINS *
PHILIP M. JOHNSTONE **
CHARLES C. ANDERSON
KERIN M. WOODS +
ELLEN C. BROWN * &
KARI-ERIK STERNLOF
MARK S. ZAMARKA #
MATTHEW R. KINELL
HANNA LORE B. MERRITT

52 EUGENE O'NEILL DRIVE
P.O. BOX 88
NEW LONDON, CT 06320
(860) 442-0367
FAX (860) 447-9915

www.wallersmithpalmer.com

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WALLER & WALLER

THOMAS M. WALLER (1846-1924)
J. RODNEY SMITH (1906-1979)
BIRDSEY G. PALMER (1915-2000)

OF COUNSEL
WILLIAM W. MINER
ROBERT W. MARRION
ROBERT P. ANDERSON, JR.
FREDERICK B. GAHAGAN

* ALSO ADMITTED IN MASS.
* ALSO ADMITTED IN RI.
ALSO ADMITTED IN MICHIGAN
& ALSO ADMITTED IN D.C.

July 16, 2014

Timothy S. Hollister, Esq.
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

Re: Gateway Development letter dated June 17, 2014

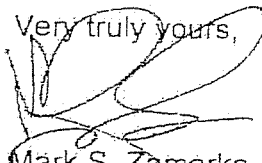
Dear Attorney Hollister:

The following is provided in answer to the questions posed in your June 17 letter.

The parcels that comprise the "Gateway" development were, along with other properties in East Lyme, the subject of a supplemental sewer benefit assessment in 2013. A resolution approving the assessments was adopted following a public hearing held on March 26, 2013.

Applications received from the Gateway developers to connect to the system are handled administratively. The town did not undertake to reserve any specific capacity amount as the developer did not request same and did not submit an application for determination of capacity.

Very truly yours,



Mark S. Zamarka, of
Waller, Smith & Palmer, P.C.

Tab 22

OWNER: GDEL Residential, LLC

3 Maple Tree Lane

PROPERTY ADDRESS: ~~5 Maple Tree Lane~~

This is a connection for one () or more (x) buildings () demolition
2 buildings, 56 units

For Inspections, call (866) 739-6931, Ext. 150 at least 24 hours in advance.
GDEL RESIDENTIAL, LLC

SIGNED: By: _____ (Owner) DATE: _____
Theodore A. Harris, its attorney.

SEWER CONTRACTOR: Mastrobattisto, Inc. LICENSE # PLM 0278400-P7

PLUMBER: _____ LICENSE # _____

PERMIT NUMBER ISSUED: 2889 DATE: 5/1/15

FEE RECEIVED: 100⁰⁰ RECEIVED BY: slmr DATE:

DRAWING OF PROPOSED CONNECTION SUBMITTED (use reverse side or separate sheet) _____

Contractor's Statement: I have thoroughly investigated the existing plumbing at this location and have disconnected and properly diverted all roof drains, yard drains, cellar drains, and cooling water, or other unauthorized connections to the sewer. I further certify that any necessary plumbing installation has been installed and does comply with the applicable codes of the Town of East Lyme and the State of Connecticut.

CONTRACTOR'S SIGNATURE:

PLUMBER'S SIGNATURE: _____

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

INSPECTION RECORD:

HOOK-UP DATE: _____ START USE DATE: _____

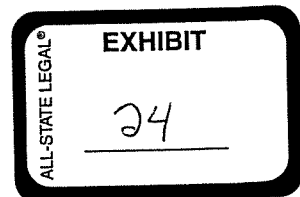
SEPTIC TANK PUMPED & FILLED: _____

WATER METER READING: _____

FINAL INSPECTION AND ALL WORK APPROVED: _____

COMMENTS:

ACCOUNT NO. _____



Tab 23

Tab 24

**LANDMARK DEVELOPMENT GROUP, LLC
APPLICATION FOR DETERMINATION OF SEWER CAPACITY
AMENDED AND CLARIFIED RESOLUTION**

March 11, 2014

WHEREAS, on June 1, 2012, Landmark Development Group, LLC and Jarvis of Cheshire ("Applicant") filed with the East Lyme Water and Sewer Commission ("Commission"), acting as the East Lyme Water Pollution Control Authority, an application "pursuant to §7-246a(1) of the General Statutes, seeking confirmation of the availability of 237,090 gallons per day of sewage disposal capacity in the Town's sewer system to serve Landmark Development's proposed residential development adjacent to Caulkins Road"; and

WHEREAS, at the public hearing on the application held on August 24, 2012, the Applicant amended its application to request availability of 118,000 gallons per day of sewage disposal capacity in the Town of East Lyme's ("Town") sewer system; and

WHEREAS pursuant to General Statutes §7-246a(1), the Commission is required to determine the adequacy of sewer capacity related to a proposed use of land; and

WHEREAS, the Commission held three public hearings on the application and listened to hours of testimony during those hearings. Numerous exhibits were submitted by the Applicant, the Commission, and individuals for consideration during the hearing process. In making its decision the Commission is considering and taking into account all of the testimony and exhibits submitted at the three hearings; and

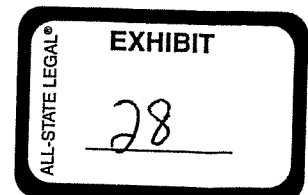
WHEREAS, the Commission has wide discretion in connection with the decision to supply sewer service to particular properties; and

WHEREAS, the Commission finds that less than 60% of the Applicant's proposed residential development is located within the Town's sewer service district; and

WHEREAS, the Town's Facilities Plan provides for sewers to be constructed in other areas of the Town which are wholly located within the Town's sewer service district and upon which assessments have been levied; and

WHEREAS, the Town has supplied sewer service to areas of the Town where customers have the option to connect to the sewer system as a result of assessments levied on their properties but have not yet connected; and

WHEREAS, the Town's Facilities Plan provides for sewers to be constructed in other areas of the Town which are wholly located within the Town's sewer service district and to which sewers are not presently available; and



WHEREAS, the Town's Facilities Plan, as amended by a report prepared by Fuss & O'Neill, Inc., entitled "Wastewater Collection System Capacity Analysis Planning Report", dated September, 2007, estimates that a full build-out of all the areas designated for sewer service, including those to which sewer service is presently provided, will require approximately 3,645,000 gallons per day of sewage treatment capacity; and

WHEREAS, pursuant to an agreement with the Town of Waterford and the City of New London ("Agreement"), the Town is entitled to make use of 15% of the treatment capacity of the Piacenti Facility (the New London Waste Water Treatment Facility); and

WHEREAS, the current treatment capacity of the Piacenti Facility is 10,000,000 gallons per day; and

WHEREAS, pursuant to the Agreement, the Town is currently entitled to 1,500,000 gallons per day of sewage treatment capacity at the Piacenti Facility; and

WHEREAS, pursuant to orders from the Connecticut Department of Energy and Environmental Protection, the Town is required to reserve 478,000 gallons per day of its available sewage treatment capacity for the benefit of various state facilities located in the Town, and this amount is not available to the Town or any other customers of the Town; and

WHEREAS, the Commission finds that the Town has between 130,000 and 225,000 gallons per day of remaining sewage treatment capacity; and

WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents between 52% and 90% of the Town's remaining sewage treatment capacity; and

WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents more than 10% of the Town's current daily sewage flow; and

WHEREAS, the remaining sewage treatment capacity must be made available to the areas of the Town already designated to receive sewer service and to those customers who have the option to connect to the sewer system as a result of assessments levied on their properties; and

WHEREAS, the Commission finds that the capacity requested in the application is a disproportionately large allocation of the Town's remaining sewage treatment capacity, and that there is not adequate sewer capacity related to the proposed use of land; and

WHEREAS, the Applicant appealed the Commission's decision to the Superior Court; and

WHEREAS, at a hearing on said appeal, held on January 16, 2014, before the Honorable Henry S. Cohn of the New Britain Judicial District, the Court remanded the case to the Commission for clarification, and instructed the Commission to determine an amount of capacity it would be willing to grant to the Applicant based on evidence already in the record; and

WHEREAS, the Commission addressed the Court's remand order at its regular meeting held on February 25, 2014; and

WHEREAS, based on a review of all the evidence in the record, including but not limited to the following:

- Weston and Sampson reports and attachments (Exhibits 31 and 38);
- Fuss & O'Neill report, including executive summary and section 5, tables V-4, V-5, state capacity graph on p.40, Figure V-14 showing capacity breakdown, Figure V-15 Future Wastewater Flow Estimation for all areas of town, sewer and unsewered, Figure V-16 showing predicted expansion ranges of all parcels, and Figure V-17 bar graph of future flow projections (Exhibit 8);
- AECOM Report (Exhibit 3, Tab 5);
- New London municipal NPDES discharge permit (Exhibit 7);
- Memo from Commissioner Zoller (Exhibit 12) and follow up email that discusses the memo;
- East Lyme sewer flows history (Exhibit 12, Exhibit 3 Tab 2);
- Landmark reports and attachments (Exhibit 3, 30 and 39);
- 1985 Facilities Report, including Table 12 (p.82) chart of problem areas, Table 13 (p.84) problem area flow estimates, Figure 12 (following p. 85) map of problem areas

the Commission finds that it is willing to grant to the Applicant 13,000 gallons per day of sewage treatment capacity; and

WHEREAS, nothing in this Amended and Clarified Resolution shall be construed as a waiver of the Commission's position that its initial resolution dated December 11, 2012 properly and accurately addressed the Application as submitted

BE IT THEREFORE RESOLVED, that the East Lyme Water and Sewer Commission, acting as the Town's Water Pollution Control Authority, pursuant to the Superior Court's remand order of January 16, 2014, based on a review of evidence in the record, hereby GRANTS to the Applicant 13,000 gallons per day of sewage treatment capacity pursuant to an application dated June 1, 2012 "seeking confirmation of the availability of 237,090 gallons per day of sewage disposal capacity in the Town's sewer system to serve Landmark Development's proposed residential development adjacent to Caulkins Road"

Tab 25

CALCULATIONS

BASE EQUATION:

$$\frac{\text{Remaining capacity}}{\text{Available area}} = \frac{X}{\text{LM development area}}$$

Using entire land area of Town:

$$\frac{250,000}{22,714} = \frac{X}{35}$$

~~22,714~~
22,714
2,598

X = 347 gpd, Or .0015 of remaining capacity for .0015 of available land

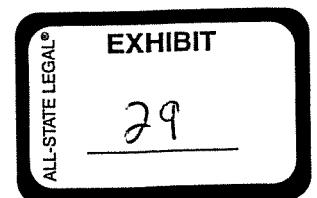
Using SSD area less state lands: → *sewer service district*

$$\frac{225,000}{5853} = \frac{X}{35}$$

X = 1345 gpd (.006) Or, .006 of available capacity for .006 of land area

WES 10/28/14

Intermed

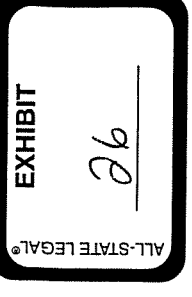


Tab 26

EAST LYME SEWER FLOWS – HISTORY

	2008	2009	2010 ¹	2011	2012	2013 ²	2014	2015	% ± Prev. Yr.
JAN.	1,002,851	1,081,072	1,037,939	918,818	956,431	975,330	1,011,343	787,646	- 22.12 %
FEB.	1,015,914	1,025,974	1,001,694	959,700	912,442	1,010,626	994,771	832,681	- 16.29 %
MAR.	1,178,427	1,026,586	1,424,903	1,001,537	886,778	1,139,232	1,026,812	1,017,280	- 0.93 %
APR.	1,148,892	1,075,581	1,341,021	938,509	915,628	1,042,500	1,126,058	938,861	- 16.62 %
MAY	1,128,447	1,053,265	1,119,627	1,046,507	1,016,580	1,057,182	1,145,107	913,816	- 20.20 %
JUN.	1,117,479	1,122,961	1,067,205	1,017,256	996,993	1,243,099	1,007,792	880,190	- 12.66 %
JUL.	1,167,524	1,195,467	1,117,893	1,027,843	1,026,063	1,217,939	1,038,583	1,048,427	0.95 %
AUG.	1,167,600	1,162,253	1,040,808	970,097	1,018,439	1,203,763	999,147	977,543	- 2.16 %
SEP.	1,093,745	1,039,287	932,705	1,167,520	912,093	1,288,056	837,706		- 100.00 %
OCT.	1,072,337	997,294	928,254	966,767	949,719	1,020,390	852,281		- 100.00 %
NOV.	1,017,881	991,412	869,937	983,082	963,598	928,615	787,769		- 100.00 %
DEC.	1,118,268	1,103,500	882,347	1,133,107	983,849	944,611	835,260		- 100.00 %
AVG.	1,102,447	1,072,888	1,063,694	1,010,895	961,551	1,089,279	971,886	924,556	- 11.25 %

¹ March 30, 2010 storm event – 8.88 inches of rain / 16.43 inches of rain for the month (Well 3A / 3B rain gauge)
² 10.65 inches of rain for June 2013 (Well 3A / 3B rain gauge)
7.18 inches of rain for July 2013 (Well 3A / 3B rain gauge)



Tab 27

State of Connecticut Monthly Flows

Month and Year	Total Actual GDP Average
February 2013	235,880
March 2013	236,209
April 2013	269,686
May 2013	266,848
June 2013	280,596
July 2013	312,378
August 2013	280,903
September 2013	296,734
October 2013	235,633
November 2013	205,436
December 2013	219,119
January 2014	242,992
February 2014	242,944
March 2014	249,884
April 2014	246,793
May 2014	263,317
June 2014	305,004
July 2014	277,574
August 2014	300,147
September 2014	315,071
October 2014	247,020

Tab 28

FILED IN EAST LYME TOWN

East Lyme Water & Sewer Commission
Regular Meeting
May 25, 1999
Minutes

CLERK'S OFFICE

June 7, 1999 at 12:10 PM
Esther B. Willard
EAST LYME TOWN CLERK

The East Lyme Water and Sewer Commission held a Regular Meeting on May 25, 1999 at the Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut. Mr. Wayne Fraser, Chairman, called the meeting to order at 7:30 PM.

PRESENT: Wayne Fraser, Chairman, Joseph Mingo, Steven DiGiovanna, Mary Cahill, Charles Ashburn, Edward Ramotowski, Mark Princevalle, Michael Tinkel, and Bruce Brailey

Also present: Fred Thumm, Director of Public Works, Gary Fritz, Superintendent of Sewer Operations, Mike Poola Superintendent of Utilities, Ed O'Connell, Town Attorney, James Ericson, Lenard Engineering

Absent: None

2. Sewer Shed Map

Mr. Thumm distributed the re-drawn map, as discussed and seen at the previous meeting, to include that parcel off Boston Post Road and east of Scott Rd., which had been left out. It shows the boundary going down Scott Rd. and meeting Boston Post Road.

Mr. Fraser noted that Colton Rd. has been added on to the new map.

Mr. Thumm indicated that the green line is the sewer shed boundary.

Mr. Mingo stated that the map is not consistent with the Motion. He noted that the boundary goes down Scott Rd. and is not in agreement with the Motion.

Mr. DiGiovanna inquired if the boundary goes down the middle of Scott Rd. Mr. Thumm responded that it goes to Scott Rd., the eastern boundary of Scott Rd.

Mr. Ashburn inquired if that the green line going down Scott Rd. does not include Scott Rd.

Mr. Fraser responded that it was up to Scott Rd.

Mr. Ashburn inquired if the boundary line goes down the edge of Scott Rd. rather than the middle of Scott Rd?. So, the boundary goes down the edge of the road. He stated his understanding that going down the edge of the road is not included and he inquired if that was the intent.

Mr. Thumm stated that his understanding of the Commission and the Motion is that the Commission is not including land on the west side of Scott Rd. in the sewer shed.

Mr. Mingo stated that the motion stated that the boundary was up to and any area that could be served by gravity. He added that that area cannot be served by gravity.

Mr. Tinkel inquired as to that area on the map encircled in red. Mr. Thumm stated that the red tries to show the areas that have been sewerred already.

Mr. Mingo inquired if Mr. Thumm had a copy of the old map as he had requested at the April Commission meeting and as indicated in the Minutes. Mr. Thumm indicated that he did not have it with him, but he could bring one up.

Mr. Mingo stated that when he asks for something as a Commission member, he expects it and in this case, he did not get his request met. He added that he has a problem with the map and that it is not what the Motion stated.

Mr. Fraser called Mr. Mingo out of order. Mr. Mingo left the meeting at 8:49 PM. .

Mr. Tinkel asked Mr. Thumm the meaning of the dotted green line on the map.

Mr. Thumm indicated that the dotted green differentiates that as being within the sewer shed, but not within the sewer shed that flows through the pump station on Main St. The sewer shed defines that as flowing through Golden Spur and out Post Rd. if it were to be connected.

Mr. Ramotowski requested another map indicating where the pump stations were located. Mr. Thumm stated such a map exists. He added that he did not think they belonged on the sewer shed map, but they can be a separate map. Mr. Thumm stated that a facilities map showing sewer and water pump stations, water storage tanks is a great idea.

Mr. Ashburn inquired if the map has to be approved by the State. Mr. Thumm stated that the map is not changing any courses of action that the Commission has taken. The State indicated that they do not need to approve the map or provide input into its creation.

Motion (8): Mr. DiGiovanna moved to adopt the map entitled "Sewer Service and Sewer Contract Areas, East Lyme dated May 1999, Sheet 1 of 1" as the Town of East Lyme's Sewer Shed Map.
Mrs. Cahill seconded the motion.
Vote in favor: (7-0), Unanimous

Tab 29

FF

MINUTES FROM PHONE CONFERENCE WITH ATTY. FULLER
FEBRUARY 1, 2001

Mr. Fraser suggested that a review of the regulations and proposals be made by staff and an agreement should be reached on what can be built in Oswegatchie Hills. He added that he would then have Waterford, Regional Planning, State Highway, and an independent engineer come to a fair and honest proposal about what can be done. He stressed staff should only consider and review the 230 acres, not the entire parcel. He added that this small parcel abuts Route 1 and there is approximately 85 feet on Boston Post Road, so the frontage is very limited. It was his understanding that the applicant owns approximately 80 acres and has options on the remaining 150 acres. He added the frontage is very steep and runs along Latimer Brook and the rest of the property is landlocked.

First Selectman Wayne Fraser, Director of Public Works Fred Thumm, Town Planner Jean Davies, and Zoning Official Bill Mulholland were in attendance for a phone call placed at 9:00 a.m. to Atty. Fuller.

Fred Thumm noted that the Facilities Plan in 1981 excluded this portion of land from the sewer shed. East Lyme has purchased 1.5 million gallons per day and we are presently at 55% usage. The ultimate build out of the sewer shed will take up all of the capacity.

Atty. Fuller stated that Affordable Housing cannot override sewer and the Water and Sewer Commission does not have to accommodate.

Mr. Fraser inquired about another proposed development in this vicinity of Boston Post Road. He noted that the pipe size would be controlled however, the pipe would pass in front.

Atty. Fuller stated that this would be defensible and there would still be a capacity problem and in a sewer shed area, capacity is taken into account.

POTENTIALS

1. NO AVAILABILITY FOR WATER AND SEWER

- Not in sewer shed, commitment elsewhere for availability. This plan would consume a lot of sewer and would require an extension.
- Without water and sewer, cannot get affordable housing project through.
- WATER AND SEWER COMMISSION HAS NO OBLIGATION TO EXTEND TO PROPERTY - DOES NOT FALL UNDER AFFORDABLE HOUSING ACT.

Atty. Fuller stated that the Zoning Commission needs a basis for denial. He suggested including the water and sewer report, addressing traffic and environmental, and the Planning Commission's report in the record.

Tab 30

Bellis A couple of points here. First, this is a zone change, it is not a site plan and so there is no need at this point to submit an application to the Water & Sewer Commission. Second, as (inaudible) clearly points out, this is a matter of discretion in terms of, it's not a matter of necessity, it is a matter of choice for the town to decide where it's going to devote those resources. It is deciding here and now, as I understand it from the 1st Selectman, that it will not support Affordable Housing in this area or the provision of infrastructure, but it wants instead to devote those resources elsewhere in the town. And that point seems to be coming through loud and clear.

Fraser Okay. I don't think people are listening. The town is in favor of Affordable Housing in the Town of East Lyme. And if it is built on land that is identified inside the sewer-shed area, there will be no distinction. We have never said anything about sewers for Affordable Housing. We said, sewers to Oswegatchie Hills, an area that is outside of the area designated back in the late 1980's, again in the 1990's by the Sewer and Water Commission. This land is outside of the boundaries for any use.

Bellis I just think that he testified earlier that there was excess capacity basically, but that they were deciding not to devote it anywhere else but where it already predetermined where it should go. But there is flexibility obviously to redirect resources and as I think the submissions that are part of this letter suggest, there's been a history of the Water & Sewer Commission to connect not with any particular policy in mind. So, I disagree wholeheartedly.